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ABSTRACT

Case citations regarding discrimination in education are provided in this document. The first section deals with civil rights remedies, specifically, employment and student discrimination. The second section describes cases involving employment discrimination on the basis of race, religion, national origin, age, and disabilities. Gender-related discrimination litigation is described in the third section, which include sex discrimination, sexual harassment, and civil rights. School segregation cases are presented in section 4, which pertains to educational programs, faculty, and students. The fifth section deals with cases of systemic school segregation, some of which include segregative intent, de facto and de jure segregation, court authority and responsibility, desegregation plans and their required ratios, choice, and white flight. Tables of cases accompany each section. (LMI)

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1992
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DISCRIMINATION

Edited by Charles J. Russo, J.D., Ed.D., Professor
University of Kentucky

Number 1 — Civil Rights Remedies. *Jacqueline A. Stefkovich*

Number 2 — Employment Discrimination. *Ralph D. Mawdsley*

Number 3 — Gender Related Discrimination. *Patricia W. First* and *Joyce W. Sprenger*

Number 4 — School Segregation: Educational Programs, Faculty, and Students. *Carole Veir*

Number 5 — Systemic School Desegregation. *William M. Gordon*

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Discrimination

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CIVIL RIGHTS REMEDIES

FOURTEENTH Series, Number 1

Prepared by Jacqueline A. Stefkovich, Assistant Professor
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Employment Discrimination

General

A white former athletic director and head football coach at a predominantly black high school brought suit under sections 1981 and 1983 against the school district and its black principal alleging discrimination in his reassignment. The Supreme Court held that under *respondeat superior*, a municipality may not be held liable for its employees' violations of section 1981. ***Jett v. Dallas Indep. Sch. Dist.***, 491 U.S. 701 (1989).

A non-tenured black female teacher brought a civil rights action under sections 1981 and 1983 against the school board, superintendent, executive director, and school administrator after her contract was not renewed. Since the nonrenewal of her contract did not impede her right to make or enforce contracts, her suit was not cognizable under section 1981. Also, because she was unable to prove the existence of discrimination, her section 1983 claims failed. ***Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ.***, 926 F.2d 505 (6th Cir. 1991).

Nonunion workers filed an unsuccessful civil rights suit under section 1983 against the teachers' union for engaging in an illegal strike; also, since the claim was neither frivolous nor filed in bad faith, the union was not entitled to attorney's fees. ***Smith v. Detroit Fed'n of Teachers***, 829 F.2d 1370 (6th Cir. 1987).

A teacher who brought section 1983 claims against a school principal, superintendent, and school board stemming from the principal's allegedly dragging her from the classroom was unsuccessful where the state laws which predominated had broader and different elements and remedies than federal claims. Also, since the principal's actions were neither of constitutional magnitude and nor involved deadly force, her section 1983 complaint failed to state constitutional claims against the principal in his personal capacity. ***Coleman v. Wirtz***, 745 F. Supp. 434 (N.D. Ohio 1990).

A Chinese-American teacher who brought civil rights claims against a black high school principal in connection with the principal's failure to promote him to department chair could pursue claims under sections 1981 and 1983 without recourse to a collective bargaining agreement's arbitration procedures in view of the absence of case law to the contrary. ***Wohl v. Cleveland Bd. of Educ.***, 741 F. Supp. 688 (N.D. Ohio 1990).

A preliminary injunction prohibiting a school district from dismissing undocumented aliens remained in effect until the aliens had an opportunity to exhaust administrative remedies under the Immigration Reform and Control Act of 1986. The injunction required the district to reinstate alien employees who had been dismissed and enjoined it from dismissing any employee who was an undocumented alien qualified for legalization because he provided a false social security number. ***League of United Latin Am. Citizens v. Pasadena Indep. Sch. Dist.***, 672 F. Supp. 280 (S.D. Tex. 1987).

First Amendment

A school nurse who was refused a summer school position, was transferred to different schools, and was removed from working with severely handicapped students brought a section 1983 action alleging retaliation for exercise of her right to freedom of speech. However, since she failed to establish a nexus between this treatment and her protected speech her claims were dismissed in part and remanded in part for a trial on the merits to decide materially disputed facts. ***Stever v. Independent Sch. Dist.***, 943 F.2d 845 (8th Cir. 1991).

A school district superintendent in Puerto Rico who was demoted because of her political affiliation successfully brought suit for reinstatement under section 1983 alleging a violation of her First Amendment rights. However, a separate hearing was required to decide the issue of back pay. ***Estrada-Izquierdo v. Aponte-Roque***, 850 F.2d 10 (1st Cir. 1988).

A school administrator who provided testimony in a teachers' civil suit against the superintendent and school board challenged her subsequent reassignment under section 1983 as retaliation in violation of her First Amendment right to freedom of expression. Neither the fact that a successor had been hired during the course of the litigation nor that the transfer was only partly motivated by impermissible considerations precluded reinstatement as a remedy. Also, her acceptance of a lower salary did not preclude an award of back pay. ***Reeves v. Claiborne County Bd. of Educ.***, 828 F.2d 1096 (5th Cir. 1987).

A teacher who allegedly exerted physical force against two students refused to apologize at the request of the principal, was suspended, and required to undergo a psychiatric examamination was unsuccessful in his civil rights action against the school district when he challenged his suspension and the examination because, despite his claim to the contrary, his actions were not constitutionally protected under the First Amendment and he did not have a property interest under state law in continued

employment without being required to undergo the examination or comply with remedial plans. ***Sweeney v. Board of Educ. of Mundelein Consol. Sch. Dist.***, 746 F. Supp. 758 (N.D. Ill. 1990).

To prevail on a First Amendment based civil rights claim, a nontenured teacher whose contract was not renewed after she showed an R-rated film in class would have to demonstrate that her showing of the film was a substantial factor in the decision not to renew her contract and that failure to renew her contract for showing the film was a violation of her First Amendment rights. ***Krizek v. Board of Educ. of Cicero-Stickney Township High Sch. Dist. No. 201, Cook County, Ill.***, 713 F. Supp. 1131 (N.D. Ill 1989).

A teacher who was denied "selected status" and given an involuntary transfer in retaliation for her exercise of free speech rights by making comments about the school system in a newspaper article was entitled to an award of $15,000 against the school board and $15,000 against the superintendent in his official capacity to compensate her for emotional distress, humiliation, and injury to her reputation even though she neither lost her job nor her income as a result of the proposed transfer or denial of "selected status." However, she was not awarded punitive damages because the school district and superintendent had immunity from such damages. ***Thompson v. Board of Educ. of the City of Chicago***, 711 F. Supp. 394 (N.D. Ill. 1989).

Fourteenth Amendment

A retired teacher unsuccessfully brought suit against the board of education under section 1983 claiming that she was deprived of property without due process when it reduced the number of her accumulated sick leave days and the appropriate compensation for these days. Her claims were barred where the deprivation of a constitutionally protected property interest was found to be a simple breach of contract for which there were remedies available under state law. ***Ramsey v. Board of Educ. of Whitley County, Ky.***, 844 F.2d 1268 (6th Cir. 1988).

A terminated school district employee unsuccessfully brought a section 1983 civil rights claim against the district where, based on a provision in a policy manual relating to termination of employment of which she was unaware prior to her termination, she had no cognizable property interest in her continued employment. ***Hohmeier v. Leyden Community High Sch. Dist.***, 748 F. Supp. 657 (N.D. Ill. 1990).

A tenured principal who was transferred without his consent to a newly created, nontenured position of superintendent of instruction brought a section 1983 claim based on deprivation of property without due process of law would have been entitled to damages for emotional distress and reputational damage if he could prove such damages. ***Farley v. North Bergen Township Bd. of Educ.***, 705 F. Supp. 223 (D.N.J. 1989).

A former school bus driver whose due process rights were violated when he was not given adequate notice and opportunity to be heard was reinstated with back pay until such time as he was afforded a proper hearing. He was also entitled to compensatory damages for mental anguish and suffering. ***Tolson v. Sheridan Sch. Dist.***, 703 F. Supp. 766 (E.D. Ark. 1988).

Nonunionized public school teachers unsuccessfully brought suit against the union representing teachers in their district alleging violations of federal and state constitutional rights of freedom of expression and association, due process, and equal protection regarding fair share agreements between municipal employers and labor organizations. The suit was dismissed because it would have involved interpreting state law and it appeared likely that the abstention in favor of proceeding before the Wisconsin Employment Relations Commission would either eliminate the need to decide these issues or substantially alter them. ***Jordi v. Sauk Prairie Sch. Bd.***, 651 F. Supp. 1566 (W.D. Wis. 1987).

Age Discrimination and Employment Act of 1967 (ADEA)

A school bus driver who was allegedly dismissed due to a traffic citation, but could show evidence of age discrimination against her successfully brought suit under the ADEA for back pay, attorney's fees, and liquidated damages. However, that portion of the judgment relating to liquidated damages was vacated where there was a lack of sufficient evidence of willfulness to sustain an award of double damages; in order to be liable for such damages, an employer must willfully, knowingly, or recklessly violate the ADEA. ***Hudson v. Normandy Sch. Dist.***, 953 F.2d 410 (8th Cir. 1992).

A 40-year-old applicant with 10 years of teaching experience unsuccessfully filed suit under the ADEA when an Iowa school district rejected her application and instead hired a 23-year-old with two years of experience because she was unable to prove that age was the determining or a discerning factor in her not being hired. ***EEOC v. Atlantic Community Sch. Dist.***, 879 F.2d 434 (8th Cir. 1989).

A retired teacher's claim that her school district's early retirement incentive package discriminated against her in violation of ADEA was dismissed where she failed to establish that the plan was a subterfuge to evade the purposes of age discrimination under the ADEA. A *bona fide* retirement plan which makes age-based distinctions does not violate ADEA unless it has the purpose and effect of retaliating against employees who have filed age discrimination claims or discriminates among employees in terms of salaries, hiring practices, or other non-fringe benefit areas. ***Gabarczyk v. Board of Educ. of Sch. Dist. of Poughkeepsie***, 738 F. Supp. 118 (S.D.N.Y. 1990).

Title VII of the Civil Rights Act of 1964

In an action by a former school guidance counselor alleging civil rights violations and wrongful termination, summary judgment in favor of the school district was affirmed. A civil rights claim under section 1983 cannot be used to assert a violation of rights created only by title VII since section 1983 does not create a substantive right, it merely provides a remedy for a violation of rights created elsewhere. However, because the counselor was not shown to have acted in bad faith or instituted frivolous litigation, the district was not entitled to attorney's fees. ***Allen v. Denver Pub. Sch. Bd.***, 928 F.2d 978 (10th Cir. 1991).

A qualified female school board employee passed over for promotions in favor of male candidates who lacked minimum qualifications brought suit against the school board alleging sex and age discrimination under title VII. She was entitled to back pay where damages awarded by the jury were the exact amount which she had testified was the maximum due her because of her denial of promotion. ***Farber v. Massillon Bd. of Educ.***, 917 F.2d 1391 (6th Cir. 1990).

A white social worker brought a discrimination suit against her school disxtrict under title VII after it retained a less senior black social worker during a reduction-in-force. The white social worker was not only awarded back pay, but was also granted attorney's fees because of the district's bad faith. ***Cunico v. Pueblo Sch. Dist.***, 917 F.2d 431 (10th Cir. 1990).

A teacher who engaged in sexual relations with her principal brought suit under title VII for alleged sexual harassment, but since title VII provides only for equitable relief, she was not entitled to compensatory or nominal damages where she failed to show that the sexual advances were motivated by an intent to harass her simply because she was a woman and not by characteristics which were personal to her. Also, she was unable to maintain a claim under section 1983 for the alleged violation of her right to equal protection in so far as it provides remedies for deprivations of specific constitutional rights, not generalized allegations of constitutional deprivations. ***Trautvetter v. Quick***, 916 F.2d 1140 (7th Cir. 1990).

A tenured teacher unsuccessfully filed suit action against the school board and school officials under title VII, the Fourteenth Amendment, and section 1983. However, he failed to state a claim of racial discrimination where he admitted that he had been fired not because of his race, but because the principal thought he was racist. ***Bradley v. Pittsburgh Bd. of Educ.***, 913 F.2d 1064 (3d Cir. 1990).

The federal government unsuccessfully brought a title VII action against the Philadelphia School Board, challenging the validity of a state garb statute, for its refusal to allow a Muslim teacher to wear religious garb in the course of her duties where it would have caused the board undue hardship to accommodate the teacher by allowing her to wear religious garb. If public schools cannot accommodate wearing of religious garb without undue burden, then the wearing of such garb is not religion protected under title VII. ***United States v. Board of Educ. for the Sch. Dist. of Philadelphia***, 911 F.2d 882 (3d Cir. 1990).

An applicant who, for ten years, unsuccessfully sought a teaching position with a school district was permitted to bring suit under title VII alleging employment discrimination based on country of national origin since she had exhausted administrative remedies with respect to her discrimination claim. ***Brown v. Hartshorne Pub. Sch. Dist.***, 864 F.2d 680 (10th Cir. 1988).

A black teacher brought suit under title VII and sections 1981 and 1983 against her school district and various officials, alleging that decisions not to renew her teaching contract were racially motivated. On appeal, the school district was entitled to a set off from her award of back pay because she failed to seek another teaching position during a three-year period when numerous positions were available. ***Johnson v. Chapel Hill Indep. Sch. Dist.***, 853 F.2d 375 (5th Cir. 1988).

A teacher filed suit against her school district claiming that her demotion from her position as kindergarten principal was based on sexual discrimination in violation of title VII. Since material issues of fact existed as to whether her initial visit with the EEOC tolled the 180-day filing requirement, her action was permitted to proceed; also, in so far as individuals filing charges with the EEOC typically lack legal training, such charges must be interpreted

with the utmost liberality in order not to frustrate the remedial purposes of title VII. ***Cobb v. Stringer***, 850 F.2d 356 (8th Cir. 1988).

A school superintendent who successfully brought suit under title VII alleging a violation of due process on the basis that his employment was improperly terminated was entitled to back pay, compensatory damges, possible punitive damages, and reasonable attorney's fees. ***Petrella v. Siegel***, 843 F.2d 87 (2d Cir. 1988).

A female principal whose application for promotion within a school district was rejected brought suit under title VII, section 1983, and the Fourteenth Amendment claiming that her rights had been violated by the district's failure to keep its promise to give women favored treatment. The district's breach of promise to give women favored treatment was not sexual discrimination; discrimination is treating a person worse because of her sex, not refusing to discriminate in her favor on the basis of sex. ***Yatvin v. Madison Metro. Sch. Dist.***, 840 F.2d 412 (7th Cir. 1988).

Two retired female public school teachers and one with currently vested pension annuity benefits who brought claims under title VII were not entitled to retroactive relief as a remedy for the allegedly discriminatory use of gender-based actuarial tables in calculating the amount of benefits that a public school teacher could receive upon retirement. However, the court left open the question of whether an employer may be required to "top up" benefits (that is, increasing benefits of female retired teachers to the more favorable rate enjoyed by men) on a showing that such relief would be consistent with the pension fund's viability. ***Brown v. New York State Teachers' Retirement Sys.***, 834 F.2d 299 (2d Cir. 1987).

A substitute teacher who brought a title VII claim of racial discrimination against a school district for not hiring her as a permanent elementary school teacher was unable to recover back pay where she failed to explore obvious avenues to employment. ***Ellis v. Ringgold Sch. Dist.***, 832 F.2d 27 (3d Cir. 1987).

A black school principal who was the prevailing party in an employment discrimination suit under title VII wherein the school district sought his dismissal was not entitled to attorney's fees since the dismissal proceedings were not part of a scheme of interrelated and complementary state and federal actions to enforce title VII employment discrimination laws. ***Cooper v. Williamson County Bd. of Educ.***, 820 F.2d 180 (6th Cir. 1987).

Female athletic coaches who were discriminated against by their school district joined a suit brought by the EEOC under the Equal Pay Act and added title VII claims but were not permitted to have the statute of limitations extended for a year so as to allow recovery of an additional year of back pay where the actions of the district were not found to be willful; also, while the coaches were entitled to modest attorney's fees under title VII, they could not recover fees under the Equal Pay Act because they had improperly intervened in the action. ***EEOC v. Madison Community Unit Sch. Dist.***, 818 F.2d 577 (7th Cir. 1987).

A female guidance counselor whose contract was not renewed due to a reduction in force plan successfully brought a title VII action against the board of education where her non-renewal was found to be tantamount to a dismissal; testimony that the district retained a male counselor, but not the female counselor because it was in the best interests of the school was legally insufficient to rebut her ***prima facie*** case of sex discrimination. ***Tye v. Board of Educ. of the Polaris Joint Vocational Sch. Dist.***, 811 F.2d 315 (6th Cir. 1987).

Tenured high school teachers who were laid off as part of a reduction in force brought a title VII action against their board of education alleging sexual discrimination. Under state law, a judicial finding that an arbitrator was without authority to grant reinstatement as a remedy was not a judgment on the merits for purposes of determining whether reinstated teachers' subsequent title VII action could be litigated. ***Kirk v. Board of Educ. of Bremen Community High Sch. Dist.***, 811 F.2d 347 (7th Cir. 1987).

A black teacher's section 1983 claim was dismissed where it arose from the same factual allegations as in her title VII claim and she failed to identify an independent constitutional or federal statutory right that had allegedly been violated by her employer. ***Smith v. Denver Pub. Sch. Bd.***, 758 F. Supp. 1421 (D. Colo. 1991).

A candidate for a position as headmaster of a high school who brought suit under title VII to enforce an agreement with the school committee and school superintendent that settled a prior sex discrimination action was entitled to an evidentiary hearing to determine whether she should be awarded the job. ***Hamilton v. School Comm. of the City of Boston***, 725 F. Supp. 641 (D. Mass. 1989).

Title VII did not preclude a section 1983 sex discrimination claim brought by a teacher whose contract was not renewed. She was entitled to assert claims for employment discrimination pursuant to both section 1983 and title VII. ***Suber v. Bulloch County Bd. of Educ.***, 722 F. Supp. 736 (S.D. Ga. 1989).

Individual school board members could not be held liable to school administrators who alleged that the board breached their contracts by rescinding salary increases where there was no evidence that the individual board members were privy to the allegedly breached contracts that existed between the board and the administrators; also, the administrators would not have been entitled to punitive damages since they are not available as a remedy under section 1983. ***Rockford Principals and Supervisors' Ass'n v. Board of Educ. of Rockford Sch. Dist. No. 205***, 721 F. Supp. 948 (N.D. Ill. 1989).

The Federal Rules of Civil Procedure and not the state's Freedom of Information Law determined the remedy regarding an elementary school teacher's discovery request in an action against the board of education for a violation of his civil rights in connection with his dismissal. ***Greenberg v. Board of Educ. of City of New York***, 125 F.R.D. 361 (E.D.N.Y. 1989).

A black high school coach who successfully brought suit under title VII for employment discrimination based on race was awarded injunctive relief, reasonable attorney's fees and expenses, and acculumated back pay and prejudgment interest where he was released from his position partly because an all white parents' group wanted a white coach as a means of attracting more white students to the school's basketball program. While the coach did have a losing season, he was considered to be better than the previous coach who had been white; also, school officials testified that academic achievement and discipline were more important to the school than a winning record. ***Jackson v. Birmingham Bd. of Educ.***, 695 F. Supp. 1164 (N.D. Ala. 1988).

Given his history of poor work habits and his failure to inform the school system of his religion, an unsuccessful applicant for a school custodial position was unsuccessful in his title VII religious discrimination claims. ***Durham v. Bleckley County Sch. Sys.***, 680 F. Supp. 1555 (M.D. Ga. 1988).

Female bus drivers were successful in their title VII claims for declaratory and injunctive relief and damages in an action against a school district which assigned male bus drivers with less seniority to selected bus routes in the village. The assignments at issue involved busing male students to private religious schools located within the village at the request of the parents of students in religious schools. ***Bollenbach v. Board of Educ. of Monroe-Woodbury Cent. Sch. Dist.***, 659 F. Supp. 1450 (S.D.N.Y. 1987).

Where a former tenured teacher brought an action challenging her alleged forced resignation, the school board and its employees were immune from punitive damages under federal civil rights statutes because section 1983 does not permit punitive damages. ***Haag v. Board of Educ.***, 655 F. Supp. 1267 (N.D. Ill. 1987).

Section 504 of the Rehabilitation Act of 1973

Where a Florida elementary school teacher was discharged because of a continued recurrence of tuberculosis, the Supreme Court ruled that tuberculosis was a handicap covered under section 504 because it affected her repiratory system and, thus, her ability to work. The Court remanded her case to determine whether she teacher was "otherwise qualified" under the Act and whether the school district could "reasonably accommodate" her. ***School Board of Nassau County, Fla. v. Arline***, 480 U.S. 273 (1987).

On remand from the Supreme Court, an elementary school teacher with tubercululosis was found to "otherwise qualified" to teach and that her disease did not pose a threat to the students; thus, the court ordered that she was to be given reinstatement or a front-pay award of $768,724 equalling her estimated earnings until retirement. ***Arline v. School Bd. of Nassau County, Fla.***, 692 F. Supp. 1286 (M.D. Fla. 1988).

A teacher of hearing impaired children who was given an administrative position when the school district discovered that he had AIDS filed suit under section 504 and was granted a preliminary injunction ordering his reinstatement where the court found that there was a high likelihood that the teacher, who was otherwise qualified for his position and did not pose a significant risk to students, would win and that he would suffer irreparable harm without the injunction. ***Chalk v. United States Dist. Ct. Cent. Dist. of Cal.***, 840 F.2d 701 (9th Cir. 1988).

A teacher who brought suit against her school district and principal claiming violations of section 504, section 1983, and Equal Protection alleging a pattern of harassment that caused her multiple sclerosis to worsen, thereby forcing her to take disability leave, was not required to exhaust administrative remedies before bringing her section 504 action. However, since she failed to establish a *prima facie* case of violation of section 504, there was no violation of her rights under Equal Protection. ***Pendleton v. Jefferson Local Sch. Dist. Bd. of Educ.***, 754 F. Supp. 570 (S.D. Ohio 1990).

Voting Rights Act

Plaintiffs were awarded attorney's fees and expenses incurred subsequent to the entry of a consent decree where they established that the city violated the Voting Rights Act by transferring control of public schools from an elected county board of education to an appointed city board of education without first obtaining federal approval. ***Robinson v. Alabama State Dep't of Educ.***, 727 F. Supp. 1422 (M.D. Ala. 1989).

Student Discrimination

Section 1983

Parents of a special education student who allegedly received excessive corporal punishment were unable to bring a section 1983 action against the school district and various educators, including the special education teacher who allegedly failed to intervene since Texas law afforded adequate post punishment civil and criminal remedies. ***Fee v. Herndon***, 900 F.2d 804 (5th Cir. 1990).

A high school student was unsuccessful in her section 1983 claim for damages and injunctive relief based on a warrantless strip search performed by school officials where a single, isolated decision by a school board to ratify a strip search was found insufficient to invoke municipal liability under section 1983. ***Williams by Williams v. Ellington***, 936 F.2d 881 (6th Cir. 1991).

A section 1983 action challenging the constitutionality of a vice principal's twenty minute questioning of a student who had been implicated in a bomb threat was unsuccessful where the administrator's actions did not violate due process; also, his seizure of the student for questioning did not violate the Fourth Amendment because his actions were reasonably related to determining whether the student had made the threat. ***Edwards v. Rees***, 883 F.2d 882 (10th Cir. 1989).

Fourteenth Amendment

Where a civil rights suit was brought against a high school gym teacher and an aide on behalf of a student who claimed that excessive punishment constituted an unauthorized deprivation of liberty, the educators were entitled to qualified immunity in the absence of an adequate post deprivation remedy. ***Coriz v. Martinez***, 915 F.2d 1469 (10th Cir. 1990).

There were no violations of either Fourteenth Amendment Due Process or Equal Protection where a student brought a civil rights action against the school board and superintendent challenging a decision to deny her credit for "time served" out of school pending an expulsion hearing which was postponed at her request. ***Rosa R. v. Connelly***, 889 F.2d 435 (2d Cir. 1989).

In a civil rights action for injuries arising out of sexual assaults by a band director, a band member had a liberty interest under the Fourteenth Amendment which entitled her to constitutional protection to freedom from constant threats, intimidation, sexual abuse, and sexual harassment from the director. Also, the principal and assistant principal were not entitled to qualified immunity from liability where there was testimony that they discouraged and minimized these reports of sexual misconduct. ***Stoneking v. Bradford Area Sch. Dist.***, 882 F.2d 720 (3d Cir. 1989).

A civil rights suit on behalf of two kindergarten students who were paddled for snickering in class alleging a violation of their constitutional rights under the Fourteenth Amendment was dismissed for failure to state a claim of deprivation of Due Process. Had the spankings been unreasonable and/or disproportionate to their offenses, they would have been entitled to relief under Texas common law and those remedies would have been adequate to afford students due process. ***Cunningham v. Beavers***, 858 F.2d 269 (5th Cir. 1988).

A school district and high school principal were entitled to attorney's fees where an action brought by the mother of a student who had not been admitted to the National Honor Society was found to be frivolous since a faculty selection committee had evaluated the student's application on the merits and found it to be wanting. ***Dangler v. Yorktown Cent. Sch.***, 777 F. Supp. 1175 (S.D.N.Y. 1991).

Summary judgment was entered on behalf of a mother and her daughter who sought a declaration of the unconstitutionality of a school district's admissions policy, damages, and injunctive relief. They were not required to exhaust administrative remedies where the daughter was denied admission because she lived apart from her mother who resided in another district. ***Major v. Nederland Indep. Sch. Dist.***, 772 F. Supp. 944 (E.D. Tex. 1991).

Parents of a student who was shot and killed by a fellow student were not permitted to bring section 1983 claims against school officials to recover for loss of his companionship and failure to provide adequate protection. Summary judgment was entered against

the parents where the alleged failure to prevent the student's death did not deprive them of any constitutional right to familial association since the government action in question was not directly aimed at the relationship between the parent and child. ***Arroyo v. Pla***, 748 F. Supp. 56 (D.P.R. 1990).

A suit brought by students who were not permitted to attend a high school prom dressed in clothing of the opposite sex and were arrested by local police was dismissed for failure to state a cause of action where they alleged a violation of their rights under section 1983 and Fourteenth Amendment claims of deprivation of liberty without due process of law since state common law provided adequate remedies for the alleged official wrong doing; also, school officials did not violate students' rights under either the First Amendment or the equal protection clause in enforcing the school board's dress regulations because the regulations were reasonably related to the valid educational purposes of teaching community values and maintaining school discipline. ***Harper v. Edgewood Bd. of Educ.***, 655 F. Supp. 1353 (S.D. Ohio 1987).

Title IX of the Education Amendments of 1972

A high school student who was subjected to gender based discrimination in connection with sexual harassment and abuse by a male teacher was entitled to monetary damages under title IX of the Educational Amendments of 1972. ***Franklin v. Gwinnett County Pub. Sch.***, 112 S. Ct. 1028 (1992).

Compensatory damages were available for a violation of title IX where a former student brought an action against the school district for dismissal from the National Honor Society when she was pregnant; a determination of whether her dismissal was due to her pregnancy or because she had premarital sex was left for the jury to decide. ***Pfeiffer v. Marion Ctr. Area Sch. Dist.***, 917 F.2d 779 (3d Cir. 1990).

Female high school students challenging New York's sole reliance on Scholatic Aptitude Test scores in awarding scholarships demonstrated irreparable harm neccessary for a preliminary injunction despite the contention that it was unlikely that any of the named plaintiffs would have received the the more valuable scholarships. ***Sharif by Salahuddin v. New York State Educ. Dept.***, 709 F. Supp. 345 (S.D.N.Y. 1989).

Equal Educational Opportunity Act (EEOA)

A suit on behalf of a class of limited English proficiency students unsuccessfully alleged that a school district's language remediation program violated the EEOA and title VI of the Civil Rights Act where it could not establish the district's failure to take appropriate action to overcome special educational barriers or that the program had a disparate impact on them. ***Teresa P. by T.P. v. Berkeley Unified Sch. Dist.***, 724 F. Supp. 698 (N.D. Cal. 1989).

Education for All Handicapped Children Act (EAHCA), reinacted in 1990 as Individuals with Disabilities Education Act (IDEA)

Parents of a handicapped child who sought a private school placement for their child were not excused from exhausting administrative remedies on the ground that doing so would have been futile; even if a school district disagrees with parents over a child's appropriate placement and fails to comply with a hearing officer's ruling, such noncompliance involves matters that should be addressed through the administrative process. ***Cox v. Jenkins***, 878 F.2d 414 (D.C. Cir. 1989).

An action on behalf of a student with a behavior disorder challenging disciplinary sanctions taken against him failed to demonstrate that he was within the exception to the exhaustion of remedies doctrine under the Education for All Handicapped Children's Act (EAHCA) before bringing suit since he did not present a convincing argument that pursuit of the prescribed administrative remedies would be futile in light of the state agency's receptiveness to his initial complaints and where he was unable to establish either that he would be irreparably harmed without immediate action or that relief available in the administrative process would be inadequate. ***Christopher W. v. Portsmouth Sch. Comm.***, 877 F.2d 1089 (1st Cir. 1989).

Students in a personal and social adjustment program who were placed in a time-out room for in-school suspensions failed in their actions against school personnel under section 1983 and the EAHCA; also, because the in-class discipline they were subjected to fell within the purview of the EAHCA, they were required to exhaust administrative remedies. ***Hayes v. Unified Sch. Dist. No. 377***, 877 F.2d 809 (10th Cir. 1989).

Parents whose handicapped children were placed in a residential setting brought suit against a local school district and state agencies alleging violations of rights to a free appropriate public education and due process. While the state was responsible for providing the children with a free, appropriate public education during the time that they resided at the center, it could not ensure a similar education at the public school because such treatment depended

upon the making of statutes subject to availability of funds and appropriation of insufficient funds. ***Kerr Ctr. Parents Ass'n v. Charles***, 842 F.2d 1052 (9th Cir. 1988).

Parents who brought a civil rights action seeking to enjoin a school district from placing their child in a special education program pending determination of his proper educational status at a due process hearing were not entitled to injunctive relief because the student's placement was in a special education level which the parent had previously approved. ***Digre v. Roseville Sch. Indep. Dist.***, 841 F.2d 245 (8th Cir. 1988).

Parents of handicapped children who brought a civil rights action under section 1983 challenging the adequacy of due process hearings provided by the state under EAHCA based on an alleged statewide pattern and practice of systematic EAHCA violations unable to be addressed at the due process hearings were not required to exhaust administrative remedies at those hearings before bringing civil rights action challenging the violations; thus, they had a private right of action to enforce the provisions of EAHCA. ***Mrs. W., Mrs. B., and Connecticut Legal Serv. v. Tirozzi***, 832 F.2d 748 (2d Cir. 1987).

Parents unsuccessfully brought a section 1983 suit alleging state deprivation of providing educational facilities and programs to which their handicapped children were entitled where they failed to produce evidence that the state's administrative remedies denied them due process; the parents needed to show either that the procedures were inadequate or that resorting to administrative procedures would have caused irreparable harm. ***Association for Retarded Citizens of Alabama v. Teague***, 830 F.2d 158 (11th Cir. 1987).

The mother of a handicapped student had the right to bring a section 1983 action to remedy due process violations when the school system failed to give effect to a favorable final decision by the local hearing officer under EAHCA because neither the Act nor state law provided for enforcement of the favorable administrative decision. ***Robinson v. Pinderhughes***, 810 F.2d 1270 (4th Cir. 1987).

An emotionally handicapped twelve year old child was, under section 1983, entitled to compensatory education for at least seven and one half months after he graduated from high school or turned 21, which ever came later, since his school district failed to provide him with an appropriate education for that period of time. ***Valerie J. v. Derry Coop. Sch. Dist.***, 771 F. Supp. 492 (D.N.H. 1991).

Where a school committee allegedly violated a student's rights by rescinding her diploma and by not providing her with appropriate special education services, no liability attached under section 504 for failing to prepare her Individualized Eucation Program or for nonissuance of her diploma. However, because her procedural rights under EAHCA were violated, she was provided with remedial educational services which were equal in time and scope to what she would have been given had the applicable regulations been followed. ***Puffer v. Raynolds***, 761 F. Supp. 838 (D. Mass. 1990).

Money damages were not recoverable under the EAHCA in a suit involving allegations of excessive and abusive discipline of special education students since claims for damages under section 1983 and section 504 cannot go forward until all administrative remedies are exhausted under the EAHCA. ***Waterman by Waterman v. Marquette-Alger Sch. Dist.***, 739 F. Supp. 361 (W.D. Mich. 1990).

Parents of handicapped children were not limited to an action pursuant to the EAHCA in challenging a federal agency; however, before they could seek relief under section 504 and related federal civil rights statutes, they were required to exhaust both impartial hearing and administrative appeal remedies under the EAHCA. ***Buffolino v. Board of Educ. of Sachem Cent. Sch. Dist.***, 729 F. Supp. 240 (E.D.N.Y. 1990).

Parents who brought suit against a school district and the state seeking reimbursement for expenses due their handicapped child was not rendered moot by their removal of the child from the school district; they were entitled to reimbursement for the cost of a private tutor and for at least one or two psychological evaluations if they could show that the district's evaluation was incorrect. However, they were not entitled to reimbursement for private school tuition because the unilateral placement of their child without the state education commissioner's approval was not "proper" under EAHCA. ***Hiller by Hiller v. Board of Educ. of the Brunswick Cent. Sch. Dist.***, 687 F. Supp. 735 (N.D.N.Y. 1988).

A seven-year-old hemophilic student with AIDS-related complex who had been provided with home instruction and was later placed alone in a separate modular classroom, even though his mother wanted him to be mainstreamed, was ordered mainstreamed since he did not pose a health threat to others and considerable harm had been done by segregating him in the modular classroom; also, because he was not handicapped within the meaning of the EACHA and his learning and behavior problems did not result from his AIDS condition, he was not required to exhaust administrative remedies. ***Robertson by Robertson v. Granite City Community Sch. Dist. No. 9***, 684 F. Supp. 1002 (S.D. Ill. 1988).

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Parents of a handicapped child who alleged that their major medical coverage was improperly utilized to pay for mental health services for children and youth program expenses which were really educational expenses for which the school board was responsible were precluded from seeking relief under section 1983 since they failed to exhaust administrative remedies. ***Laura V. v. Providence Sch. Bd.***, 680 F. Supp. 66 (D.R.I. 1988).

Parents of a second grade student who had difficultly keeping up with her reading allegedly due to the school district's failure to provide her with an individualized education unsuccessfully sought monetary damages for the physical and emotional stress and harm that she reportedly suffered from since the EAHCA does not provide a private cause of action for physical or emotional harm. ***Smith v. Philadelphia Sch. Dist.***, 679 F. Supp. 479 (E.D. Pa. 1988).

A suit brought against a school district by an insurer which had paid a child's medical expenses alleging that under EAHCA, the district was liable for the cost of attendant care for the child during the school day was dismissed where the insurer lacked standing to initiate these administrative procedures because only parents or a school district may initiate such actions. ***Allstate Ins. Co. v. Bethlehem Area Sch. Dist.***, 678 F. Supp. 1132 (E.D. Pa. 1987).

Parents of children who attended school with a hemophilic student who had an emotional disorder and AIDS lost in their suit to bar the student from school even though they had obtained a temporary restraining order from a state court; since acceptance of federal funding under the EAHCA required the school district to provide an appropriate education for this child based on his emotional disorder, the issue of whether his having AIDS constituted a handicap was never decided. ***Parents of Child, Code No. 870901W. v. Coker***, 676 F. Supp. 1072 (E.D. Okla. 1987).

The mother of a diabetic student who alleged that the school district deprived her daughter of needed medication and medical attention was unsuccessful in her section 1983 claims based on a violation of EAHCA because, based on a single incident, the district was not responsble to train or supervise its employees in the treatment of a diabetic student. ***DeFalco by DeFalco v. Deer Lake Sch. Dist.***, 663 F. Supp. 1108 (W.D. Pa. 1987).

In an action against a school board and superintendent for failure to receive a prompt hearing and notice of rights for a disciplinary action, a handicapped student was not required to pursue further administrative remedies in order to state his claims under section 1983 and the EACHA. ***Doe v. Rockingham County Sch. Bd.***, 658 F. Supp. 403 (W.D. Va. 1987).

Parents of a multiply handicapped child who sought prospective relief, tuition reimbursement, damages, and attorney's fees, under the EAHCA, section 504, and section 1983, were limited to relief under the EAHCA since it provided the exclusive remedy in such a case. ***Silano v. Tirozzi***, 651 F. Supp. 1021 (D. Conn. 1987).

The Handicapped Children's Protection Act (HCPA)

Following a settlement with the school district, parents of a speech-impaired student successfully brought suit to recover attorney's fees under the HCPA despite the district's assertion that such benefits were not special education services. The parents were entitled to prevailing party status for purposes of the Act's fee-shifting provision because the court ordered remedies of individualized instruction and special therapy altered the legal relationship between the school district and their handicapped child. ***Angela L. v. Pasadena Indep. Sch. Dist.***, 918 F.2d 1188 (5th Cir. 1990).

Parents who sought attorney's fees and other costs incurred in bringing administrative actions pursuant to the EAHCA were denied relief under the HCPA since it only authorizes awards of attorney's fees to persons who prevail in actual court cases and not in administrative proceedings. ***Moore v. Dist. of Columbia***, 907 F.2d 165 (D.C. Cir. 1990).

The parents of a handicapped child were not only awarded attorney's fees and costs incurred in their successful attempts to pursue administrative remedies with the school board under EAHCA, but were also entitled to reasonable fees for time spent by the attorney in successfully defending the attorney fee award. ***Duane M. v. Orleans Parish Sch. Bd.***, 861 F.2d 115 (5th Cir. 1988)

Parents who prevailed at an administrative hearing under the EAHCA were entitled to attorney's fees pursuant to the HCPA even though their attorney had been employed by a publicly funded state agency. ***Eggers v. Bullitt County Sch. Dist.***, 854 F.2d 892 (6th Cir. 1988).

Parents of a handicapped child were not entitled to attorney's fees under the EAHCA their attorney unneccessarily aggrandized and protracted the

misunderstanding between the parties and thus did not serve the purposes of the HCPA. ***Fischer by Fischer v. Rochester Community Sch.***, 780 F. Supp. 1142 (E.D. Mich. 1991).

Parents of a handicapped child who was placed in a residential facility were granted attorney's fees under the EAHCA even though the student was not placed in a recommended residential school, since they were the prevailing party within the meaning of the EAHCA. ***James v. Nashua Sch. Dist.***, 720 F. Supp. 1053 (D.N.H. 1989).

Under the HCPA, parents of a handicapped child were able to bring action in federal court to recover attorney fees for work done solely at the administrative level. ***Turton v. Crisp County Sch. Dist.***, 688 F. Supp. 1535 (M.D. Ga. 1988).

Section 504 of the Rehabilitation Act of 1973

Deaf parents of non-hearing impaired children who brought suit against a school district alleging violations of section 504 and section 1983 were found to be "otherwise-qualified" handicapped persons entitled to sign language interpreters, at school district expense, at school-initiated activities incident to the education of their children. ***Rothschild v. Grottenhaler***, 907 F.2d 286 (2d Cir. 1990).

Parents of a handicapped student were unable to collect damages under section 504 for the death of their child which occurred when a recess supervisor required the student, who suffered from cardiac arrhythmia, to run 350 yards in less than two minutes as a punishment for talking with another classmate since their claims hinged on alleged discrimination on the basis of handicap. ***Waechter v. School Dist. No. 14-030 of Casopolis, Mich.***, 773 F. Supp. 1005 (W.D. Mich. 1991).

A mentally retarded child with AIDS was "otherwise qualified" to attend a trainable mentally handicapped classroom in his school, the most appropriate educational setting for her, since the overall risk of transmssion from all bodily substances, including blood, saliva, tears, and urine did not rise to a level of significant risk justifying her exclusion from the classroom. ***Martinez v. School Bd. of Hillsboro County, Fla.***, 711 F. Supp. 1066 (M.D. Fla. 1989).

A 12 year old student who contracted AIDS through a blood transfusion and was excluded from his regular classes and extracurricular activities was ordered returned where he was found to be handicapped under section 504 since his impairment substantially limited major life activities, he was otherwise qualified to attend school, he posed a minimal risk to others, and he had been harmed through loss of self-esteem which could be partially restored if he were reinstated. ***Doe v. Dolton Elementary Sch. Dist. No. 148***, 694 F. Supp. 440 (N.D. Ill. 1988).

In a suit brought by parents of a handicapped child against various agencies, including the local school board, for conditions of a juvenile detention center, the parents would have been eligible to bring claims under both section 504 and the EAHCA, but were precluded from doing so because they had not demonstrated that they had exhausted all administrative remedies under EAHCA or that such exhaustion would have been futile. ***G.C. by and Through W.S. v. Coler***, 673 F. Supp. 1093 (S.D. Fla. 1987).

The parents of a first grade student diagnosed as having AIDS were not required to exhaust administrative remedies prior to bringing a section 504 suit against the school board and school district for the exclusion of their child from class and to provide him with a home tutor where there was virtually no evidence that he student suffered from limited strength, vitality, or alertness or that any such limitation had adversely affected his educational performance because the EAHCA applies only when a child's physical condition adversely affects his educational performance and exhaustion of remedies is not required by the Rehabilitation Act. ***Doe by Doe v. Belleville Pub. Sch. Dist.***, 672 F. Supp. 342 (S.D. Ill. 1987).

A kindergarten child who was excluded from class because he had AIDS and had bitten another child was ordered reinstated under section 504 where he child was otherwise qualified to attend class and the school board failed to show that AIDS could be transmitted by biting. ***Thomas v. Atascadero Unified Sch. Dist.***, 662 F. Supp. 376 (C.D. Cal. 1987).

After a school district placed an 11 year old hemophilic child with AIDS on home study while it was formulating an AIDS policy, the child's guardian was granted preliminary and permanent injuctions permitting the child to return to school as well as an award of attorney's fees since the district had taken an unreasonably long time in formulating its AIDS policy. ***Phipps v. Saddleback Valley Unified Sch. Dist.***, 251 Cal. Rptr. 720 (Cal. Ct. App. 1988).

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EMPLOYMENT DISCRIMINATION

FOURTEENTH Series, Number 2

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Race

Assignments/Transfers

A white football coach-athletic director who was reassigned by the school superintendent to another school with noncoaching responsibilities at the recommendation of the high school's black principal brought suit under sections 1981 and 1983. The Supreme Court held that the school district could be liable under section 1983 only if the superintendent possessed final policy making authority in the area of employee transfers; also, the district could not be liable for its employees' violation of the rights enumerated in section 1981 under *respondeat superior*. ***Jett v. Dallas Indep. Sch. Dist.***, 109 S. Ct. 2702 (1989).

A tenured black teacher failed to establish title VII discriminatory treatment, impact, or retaliation where statistical evidence of some disparity in placement of black, as opposed to white, teachers according to performance appraisals was not admissable since it was not based on personal knowledge and the school board lacked discriminatory motives since it had adopted the findings of an administrative judge. ***Smith v. Denver Pub. Sch. Bd.***, 767 F. Supp. 226 (D. Colo. 1991).

A school board assignment policy adopted pursuant to specific state and federal directives to integrate public school faculties and staffs by establishing minimum and maximum percentage ranges for black representation in the faculty of each school in the district was reasonable. Thus, a strict scrutiny standard did not apply to an equal protection challenge where the policy was for the purpose of achieving unitary status. ***Vaughns v. Board of Educ. of Prince George's County***, 742 F. Supp. 1275 (D. Md. 1990).

Two assistant varsity coaches, one Caucasian and the other Hispanic, who were removed from a varsity football team and assigned to a sophomore team to make room for two black coaches were discriminated against under the Equal Protection Clause on the basis of race where no reason other than race was shown in their reassignments. ***Covington v. Beaumont Indep. Sch. Dist.***, 738 F. Supp. 1041 (E.D. Tex. 1990).

Discharges/Suspensions/Demotions

A black teacher discharged for teaching students the questions on a standardized test was unsuccessful in a race discrimination claim when the school district produced evidence that white teachers had been discharged for the same offense. ***Scoggins v. Board of Educ. of Nashville, Ark.***, 853 F.2d 1472 (8th Cir. 1988).

A black administrative assistant discharged for intermingling his personal business with his school employment and for improperly using his position to secure the hiring of a teacher failed in his race discrimination claim in the absence of specific facts to support discriminatory intent. ***Lee v. Albemarle County Sch. Bd.***, 648 F. Supp. 744 (W.D. Va. 1986), ***aff'd without published opinion***, 829 F.2d 1120 (4th Cir. 1987).

A black cosmetology teacher who had been discharged because of numerous parental complaints, lack of effective classroom discipline, failure to use effective teaching methods, and refusal to obey supervisory directives was unable to state a *prima facie* case under title VII when she could not meet the burden of demonstrating by a preponderance of the evidence that others not in the protected class were treated more favorably. ***Mack v. Kent County Vocational and Technical Sch. Dist.***, 757 F. Supp. 364 (D. Del. 1991).

A black custodial employee discharged after pleading guilty to a misdemeanor count of possession of marijuana was not the victim of race discrimination under sections 1981 and 1983 where three white employees similarly situated had been discharged for drug offenses. ***Doffoney v. Board of Trustees for Beaumont Indep. Sch. Dist.***, 741 F. Supp. 125 (E.D. Tex. 1990).

A black female over the age of 50 who alleged not only that she was doing exemplary work when she was demoted from a position as a principal to classroom teacher but also that her former principalship was filled by a younger white male stated a *prima facie* case for race, sex, and age discrimination under section 1981 but not under section 1983. ***Nelson v. School Bd. of Palm Beach County, Fla.***, 738 F. Supp. 478 (S.D. Fla. 1990).

A black nontenured former school band director was able to establish a title VII disparate impact claim after he had been dismissed following a criminal charge of possession of two marijuana cigarettes, but was not reinstated when the criminal charges were eventually dismissed even though two white teachers who had been charged with the misdemeanor offenses of shoplifting and driving under the influence had each been reinstated. Also, he was awarded only one year's back pay and was not given his job back since reinstatement after seven years of litigation would have unfairly displaced an innocent third party. ***Daniels v. City of Alcoa***, 732 F. Supp. 1467 (E.D. Tenn. 1989).

A discharged black basketball coach was successful in his employment discrimination suit alleging that he had been removed from his position because of his race where, based on an admission from the school's athletic director that there were factors more important than win-loss records and that the discharged coach was a better coach than his replacement, the articulated reasons for the black coach's removal were a mere pretext for discrimination. ***Jackson v. Birmingham Bd. of Educ.***, 695 F. Supp. 1164 (N.D. Ala. 1988).

A black school bus driver who solicited sex from a white student and was suspended with pay for the balance of the school year failed to state a section 1983 claim when his contract was not renewed for the subsequent year because his unsupported assertion that two white employees had not been nonrenewed for similar conduct failed to refute the school district's evidence that it acted in good faith. ***Williams v. Conroe Indep. Sch. Dist.***, 809 S.W.2d 954 (Tex. Ct. Civ. App. 1991).

A discharged black custodial supervisor prevailed in his title VII disparate treatment case through the credibility of his own testimony, as opposed to that of the building principal and the custodian's two co-workers, that the school district's proferred reason of insubordination for discharging him was pretextual; similar insubordination by the co-workers had been treated differently. ***Quincy Sch. Dist. No. 172 v. Human Rights Comm'n***, 555 N.E.2d 21 (Ill. App. Ct. 1990).

Nonrenewals/Lay-offs/Retirements

A white social worker discharged as part of a reduction-in-force prevailed in her title VII case against a school district and was entitled to back pay where the district retained a lesssenior black administrator whose position she would have been entitled to under the district's seniority system. Although the district maintained that its reason for retaining the black social worker was to further its affirmative action program, it presented no evidence that anything other than the scarcity of blacks in the relevant work force was responsible for the racial imbalance in the work force. ***Cunico v. Pueblo Sch. Dist.***, 917 F.2d 431 (10th Cir. 1990).

A reverse discrimination claim brought by white teachers was time-barred when they failed to commence their section 1983 action within six years of the school district's layoff decision; they improperly based their action on the later date of actual termination. ***Kuemmerlein v. Board of Educ. of Madison Metro. Sch. Dist.***, 894 F.2d 257 (7th Cir. 1990).

A black teacher whose contract was nonrenewed failed in his section 1983 action where he was unable to prove that the reasons given for his nonrenewal, namely parental concerns and his lack of care for band equipment, were not the determining factors for the decision. ***Tyler v. Hot Springs Sch. Dist. No. 6***, 827 F.2d 1227 (8th Cir. 1987).

A provision in a collective bargaining agreement which stated that in order to increase the percentage of black teachers if a lay off occurred, no black teachers would be laid off until all white teachers had been laid off violated the equal protection clause because rather than being tailored to remedy previous discrimination, it created an absolute preference for black teachers. ***Britton v. South Bend Community Sch. Corp.***, 819 F.2d 766 (7th Cir. 1987).

A black junior high school principal who was nonrenewed for his violation of a school board policy regarding the admission of students to the school's Isolated Learning Center, for low teacher morale, and for inadequate discipline was unsuccessful in his racial discrimination complaint when he was not hired to fill one of two vacant elementary principalships. The district was able to rebut his *prima facie* case by producing evidence that his removal had been for administrative deficiencies, that other white applicants with poor records were not considered for the positions, and that his former white, female assistant principal had been removed when he was. ***Brown v. Springfield City Sch. Bd. of Educ.***, 689 F. Supp. 783 (S.D. Ohio 1988).

A school district was granted summary judgment against a nontenured black teacher whose contract had been nonrenewed along with three white teachers and the principal evaluating the teacher was black. The teacher was unable to produce evidence that the district's reasons for her nonrenewal, based on her lack of cooperation, hostility, and insubordination toward school administrators, were pretextual. ***Sommerville v. Tuscaloosa City Bd. of Educ.***, 579 So. 2d 628 (Ala. Civ. App. 1991).

The elimination of two positions, one of which was occupied by a black female noncertified vocational assistant, in a funded program in order to save money, and hiring of a white female teacher's aide, who was certified, in a completely separate employment category, constituted a nondiscriminatory reason sufficient to rebut the black assistant's claim of racial discrimination. Even though she offered to accept a reduced salary in order to keep her job, she failed to demonstrate that the school's reason was pretextual because the decision to eliminate the positions was made prior to her offer. Also, the new position had teaching duties, requiring a certified aide, which the previous position did not. ***Smith v. Chicago Bd. of Educ.***, 530 N.E.2d 1089 (Ill. App. Ct. 1988).

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Harassment/Retaliation

A teacher who had been employed by a school district from 1978 to 1980 and who had been a party to a lawsuit in 1985 which contended that the district's policies and practices were racially discriminatory stated a cause of action for retaliation when she applied for a vacant position in April 1985 but was not hired. ***Sherpell v. Humnoke Sch. Dist. No. 5 of Lonoke County, Ark.***, 874 F.2d 536 (8th Cir. 1989).

A school district was granted summary judgment against a black female teacher who alleged continuing harassment following her reinstatement after she filed a title VII action where she failed to make out a *prima facie* case of disparate treatment, disparate impact, or retaliatory discharge. ***Smith v. Denver Pub. Sch. Bd.***, 767 F. Supp. 226 (D. Colo. 1991).

A black speech and language pathologist who was denied admission to a school district's Principal Trainee Program, a requirement for advancement to assistant principal, had not been retaliated against in violation of title VII for having filed complaints with the Equal Employment Opportunities Commission (EEOC) where none of the persons reviewing her application to the Program knew of the discrimination complaints. ***Featherson v. Montgomery County Pub. Sch.***, 739 F. Supp. 1021 (D. Md. 1990).

Promotions/Tenure

A school district's promotion of a white male over a black male to a position as administrative assistant for secondary schools was upheld as nondiscriminatory and not pretextual where the white candidate had presided over the merger of two high schools and the new administrative assistant would be responsible to conduct such a merger. ***Senigar v. Beaumont Indep. Sch. Dist.***, 760 F. Supp. 1200 (E.D. Tex. 1991).

A black assistant principal who had been passed over four times in favor of white applicants was entitled to review employment files in order to determine whether there was the possibility that a pattern or practice of racial discrimination might be revealed. ***Dixon v. Sanderson***, 728 S.W.2d 878 (Tex. Ct. App. 1987).

Job Qualifications/Hiring Decisions

A black male who applied unsuccessfully for fourteen different positions at Harvard University was time barred in his civil rights suit against the university because he waited until January, 1989 to file his action after having received his right to sue letter from the Equal Employment Opportunities Commission in September, 1983; he should have filed suit within 90 days of receiving the letter. ***Johnson v. Rodriguez***, 943 F.2d 104 (1st Cir. 1991).

A black teacher whose contract was not renewed because she did not hold a state teacher's certificate was entitled to back pay and benefits, attorneys fees, and reemployment; the school board's claim that it was forced to dismiss her because she did not pass a teacher certification test was not a defense to employment discrimination. ***Richardson v. Alabama State Bd. of Educ.***, 935 F.2d 1240 (11th Cir. 1991).

A school district's informal practice of filling teaching positions without advertising, with the result that most positions were filled by white applicants, had a disparate impact on potential black applicants and warranted an injunction against its continuation. ***Thomas v. Washington County Sch. Bd.***, 915 F.2d 922 (4th Cir. 1990).

A teacher was unable to establish race or gender discrimination where she had failed to apply for an open position and where, even had she applied, she lacked the necessary certification. ***Chambers v. Wynne Sch. Dist.***, 909 F.2d 1214 (8th Cir. 1990).

Teachers who were terminated from their positions for failing to pass Texas' compulsory certification examination were unsuccessful in their employment discrimination suit since by losing their jobs they were no longer state employees and could not bring suit against the State under title VII and related legislation; also, the former teachers failed to establish a *prima facie* violation of title VII because they did not apply for the noncertified positions for which they were qualified. ***Fields v. Hallsville Indep. Sch. Dist.***, 906 F.2d 1017 (5th Cir. 1990).

A black teacher who had been employed as a full-time substitute for two years on a provisional certificate but who was not hired as a permanent teacher was entitled to partial back pay and possible reinstatement in her title VII case. ***Ellis v. Ringgold Sch. Dist.***, 832 F.2d 27 (3d Cir. 1987), *aff'd without published opinion*, 877 F.2d 54 (3d Cir. 1989).

A black carpenter who scored slightly lower on a civil service examination than a white employee who was chosen for an administrative position, but who had a college degree, a teaching certificate, and had completed a management course (none of which the white employee had) was successful in proving discrimination where there was a serious history of

racial imbalance in his division and because of disregard of an affirmative action mandate. ***Richards v. New York City Bd. of Educ.***, 668 F. Supp. 259 (S.D.N.Y. 1987), *aff'd without published opinion*, 842 F.2d 1288 (2d Cir. 1988).

A black applicant who was not hired for a high school teaching position was unable to prove discrimination when the district produced evidence that the successful applicant had more teaching experience than the black applicant, a valid nondiscriminatory reason. ***Boudreaux v. Helena-West Helena Sch. Dist.***, 819 F.2d 854 (8th Cir. 1987).

In a discrimiation complaint by a black staff member, job progression and minimum experience requirements were not found to have perpetuated past discrimination; even if they did, the Department of Education was able to prove that the requirements were necessary for its efficient operation. ***Davis v. Alabama Dep't of Educ., Dep't of Disability Determination Serv.***, 768 F. Supp. 1471 (N.D. Ala. 1991).

In a disparate treatment case where a white applicant was hired over two black female applicants for the position of Supervisor of Elementary Education, the black women were unable to establish a violation of title VII since the school district's proferred reasons for hiring the white applicant, superior education and work experience, were the true reasons for the employment decision. ***Weber v. Port Arthur Sch. Bd.***, 759 F. Supp. 341 (E.D. Tex. 1991).

The hiring of one black applicant over another to fill a teaching position in an elementary school did not preclude a charge of racial discrimination. However, the unsuccessful applicant did not prevail because the school district reasonably believed that since she was out of town during the interview period, she was no longer interested in the position. ***Sherpell v. Humnoke Sch. Dist. No. 5 of Lonoke County***, 750 F. Supp. 971 (E.D. Ark. 1990).

A black applicant for a position as an assistant high school principal who was rejected in favor of a white candidate because he had not performed as well during the interview process unsuccessfully brought a title VII claim where he was unable to raise a reasonable inference that the school district's reason was pretextual. ***Morton v. City Sch. Dist. of City of N.Y.***, 742 F. Supp. 145 (S.D.N.Y. 1990).

A black principal who was denied tenure after a three year probationary period and was succeeded by a white principal failed to state a *prima facie* case permitting an inference of discrimination because the white principal also had to serve a three-year probationary period. ***Louis v. Board of Educ. of City of N.Y.***, 705 F. Supp. 751 (E.D.N.Y. 1989).

A complaint filed by a white female teacher-aid alleging that she was discriminated against on the basis of race and sex because she was paid less for the same work performed by a Native American male was dismissed since the jobs were significantly different; however, the school district was not entitled to attorney fees since the complaint was not frivolous and she made out a *prima facie* case stating sufficient supporting evidence. ***McCann v. Trustees, Dodson Sch. Dist.***, 816 P.2d 435 (Mont. 1991).

Religion

Discharges/Suspensions/Demotions

A school district did not violate the title VII rights of a female Muslim teacher when it refused to accomodate her desire to wear religious garb while teaching in a public school. ***United States v. Board of Educ. for the Sch. Dist. of Philadelphia***, 911 F.2d 882 (3d Cir. 1990).

A teacher who wore a head wrap as an expression of her religion could be discharged for refusing to abide by the school's dress code for faculty and students; however, she was entitled to unemployment compensation benefits because her head wrap was a protected form of both religious and cultural expression. ***Mississippi Employment Sec. Comm'n v. McGlothin***, 556 So. 2d 324 (Miss. 1990).

A tenured teacher was properly discharged when, despite an earlier warning and four-day suspension, his repeated references in the classroom to Christianity, God, the devil, and demons exceeded the constitutional boundaries within which discourse is permissable under the Establishment Clause. ***Rhodes v. Laurel Highlands Sch. Dist.***, 544 A.2d 562 (Pa. Commw. Ct. 1988).

Job Qualifications/Hiring Decisions

A private corporation which provided auxiliary services to nonpublic school students in the Philadelphia School District discriminated against an applicant who was not hired because, as a Muslim, she wore a two-toned green scarf tied to the side of her head. However, as there was nothing facially religious or likely to cause the students to perceive it as religious garb under a state guidelines proscribing religious garb, she was entitled to back pay under title VII. ***EEOC v. Reads, Inc.***, 759 F. Supp. 1150 (E.D. Pa. 1991).

An applicant seeking a position as a school custodian who filed a title VII action alleging discrimination on the basis of religion when he was not hired failed to establish a *prima facie* case because even though he stated that he was a preacher, he was never asked and never indicated which religion or denomination he espoused. ***Durham v. Bleckley County Sch. Sys.***, 680 F.Supp. 1555 (M.D. Ga. 1988).

National Origin

Discharges/Suspensions/Demotions

Where a terminated media specialist who appeared *pro se* alleged discrimination on the basis of her country of national origin named her supervisors rather than the school board as defendants in her title VII suit, she was permited to amend her complaint since the school district's attorney was already handling the defense and the board was not adversely affected. ***Santiago v. Wood***, 904 F.2d 673 (11th Cir. 1990).

Harassment/Retaliation

A Mexican-American who filed suit under title VII and section 1983 alleging discrimination based on her country of national origin when a school district refused to hire her as a teacher for the 1984-85 school year did not have to file a separate EEOC complaint when she was not hired for the 1985-86 school year since she alleged that the latter decision not to hire her was in retaliation for her EEOC filing and part of an ongoing pattern of discrimination. ***Brown v. Hartshorne Pub. Sch. Dist. No. 1***, 864 F.2d 680 (10th Cir. 1988).

Promotions/Tenure

An teacher of Chinese descent who had not been selected as department chairperson stated a civil rights cause of action against a black high school principal who had selected a black female. The two-year statute of limitations under state law did not begin to run until the rejected teacher received written notice of his nonselection in September of 1987; thus his complaint filed August 17, 1989 was timely. ***Wohl v. Cleveland Bd. of Educ.***, 741 F. Supp. 688 (N.D. Ohio 1990).

An Asian American who had been denied a promotion to the position of printer in favor of a black employee was unsuccessful in his title VII claim when he was unable to prove that the reason for his being denied a promotion was pretextual. Both applicants were viewed as equally qualified, but the black candidate was selected because the acting director, for whom he had worked during the previous summer, had been impressed with the way he had handled his job related responsibilities. ***Silpacharin v. Metropolitan Gov't of Nashville and Davidson County***, 797 S.W.2d 625 (Tenn. Ct. App. 1990).

Job Qualifications/Hiring Decisions

An Hispanic applicant for a position as an assistant principal who was rejected by the school board in favor of a black applicant stated a triable cause of action for discrimination based on national origin under both section 1983 and the Fourteenth Amendment when she alleged sufficient facts in her complaint so that the reasons proferred by the board were considered to be pretextual; board members had not read her resume, had not listened to her taped interview, or had not asked the same questions of both candidates. ***Rosario-Oluedo v. Community Sch. Bd. for Dist. 17***, 756 F. Supp. 95 (E.D.N.Y. 1991).

An Hispanic employee was not discriminated against on the basis of his national origin when the National Education Association did not hire him for a managerial position after his job had been abolished since he was not qualified for the new position and the new position was to be filled by an existing employee. ***Fuentes v. National Educ. Ass'n***, 752 F. Supp. 487 (D.D.C. 1989), *aff'd without opinion* 913 F.2d 981 (D.D.C. Cir. 1990).

Age

Assignments/Transfers

A principal over the age of 65 who resigned after the school district proposed her reassignment from an elementary school to a dual principalship over two elementary schools farther from her home failed to prove that she suffered a materially adverse change in the terms or conditions of her employment because of the district's allegedly discriminatory conduct. ***Spring v. Sheboygan Area Sch. Dist.***, 865 F.2d 883 (7th Cir. 1989).

A 62 year old Headstart worker who allegedly violated school policy by spanking a child established a *prima facie* case of age discrimination; however, she was unable to rebut the school's nondiscriminatory defense that three other teachers who violated this policy, designed protect the safety and welfare of

students, had previously been suspended. ***Mingo County Equal Opportunity Council v. State Human Rights Comm'n***, 376 S.E.2d 134 (W. Va. 1988).

Discharges/Suspensions/Demotions

The EEOC had jurisdiction to investigate and enforce its subpoenas in an action brought by a school custodian even if the filing of an ADEA complaint occurs beyond the two year statute of limitations but within the three-year statute of limitations for willful violations; however, the EEOC does not have to establish existence of willful violations before it can investigate because it has the authority to do so at any time. ***EEOC v. Ritenour Sch. Dist.***, 692 F. Supp. 1068 (E.D. Mo. 1988).

Nonrenewals/Lay-offs/Retirements

Where school bus drivers were required to retire at age 65, the dispute was remanded for factual determinations according to tests that employers must demonstrate the existence of a business purpose and must rely on age as a proxy determinant in assessing a safety related job qualification. ***Childers v. Morgan County Bd. of Educ.***, 817 F.2d 1556 (11th Cir. 1987).

An accounting supervisor in a school district who resigned in 1979 allegedly under pressure and filed an ADEA charge in 1986 failed to produce evidence of bad faith, deception, or false assurances on the part of the school district so as to warrant an equitable waiver of the two and three-year statutes of limitations. ***Douchette v. Bethel Sch. Dist. No. 403***, 818 P.2d 1362 (Wash. 1991).

A school bus driver who was discharged because he was 70-years-old prevailed under a state statute prohibiting discrimination between the ages of 40 and 70 where the school district had no factual basis for believing all persons within the class would be unable to perform the job safely or efficiently. ***Montour Sch. Dist. v. Commonwealth of Pa. Human Relations Comm'n***, 530 A.2d 957 (Pa. Commw. Ct. 1987).

Promotions/Tenure

A school which changed an instructor's employment from "continuing" to "annual" when he turned 70 violated the ADEA by depriving the instructor of tenure. ***EEOC v. School Bd. of Pinellas County, Fla.***, 742 F. Supp. 622 (M.D. Fla. 1990).

A 70-year-old teacher whose tenure was taken away under a state statute could not be denied a year-by-year contract solely on the basis of age. ***Morrow v. Duval County Sch. Bd.***, 514 So. 2d 1086 (Fla. 1987).

Job Qualifications/Hiring Decisions

A school district sucessfully articulated nondiscriminatory reasons for not hiring a 54-year-old applicant by producing evidence that 41% of jobs in the district were filled by persons over 40, he had some unfavorable evaluations in his file from part-time teaching assignments in the district, his interviews with principals were unimpressive, and there was a pool of over 2000 applicants for the two positions he applied for. ***Wooden v. Board of Educ. Jefferson County, Ky.***, 931 F.2d 376 (6th Cir. 1991).

A school board did not violate the ADEA by hiring a 41-year-old applicant over a 61-year-old one as Coordinator of Transportation where the state statute required that hiring and promotion be based on seniority, qualifications, and evaluation of past service with the board; the individual who was hired had 17 years of seniority with the board while the unsuccessful applicant had none. ***Dalton v. Mercer County Bd. of Educ.***, 887 F.2d 490 (4th Cir. 1989).

Two previously furloughed teachers were unable to establish a *prima facie* case of age discrimination under disparate treatment or disparate impact where a majority of the 700 applicants for 13 teaching positions were under age 40 and a majority of those actually hired were over 40. ***Lowe v. Commack Union Free Sch. Dist.***, 886 F.2d 1364 (2d Cir. 1989).

Hiring a new teacher who was under the age of 40 rather than a 40-year-old applicant, based on a pay scale which offered a lower salary for less experienced teachers, did not constitute discrimination under the ADEA; to hold othwerwise would, contrary to the ADEA, effectively require a preference in hiring those 40 and over. ***EEOC v. Atlantic Community School Dist.***, 879 F.2d 434 (8th Cir. 1989).

The burden of proof in a *prima facie* ADEA case is a preponderance of the evidence, but once a school has presented evidence of a nondiscriminatory reason for nonrenewal, the rebuttal standard for the complainant is clear and convincing evidence. Thus, where a teacher who was not offered one of a number of open teaching positions after a reorganization was unable to offer substantial evidence that the school's position, that she was unable to relate

harmoniously with her co-workers, was a pretext for age discrimination, she was denied relief. ***Graham v. Renbrook Sch.***, 692 F. Supp. 102 (D. Conn. 1988).

Benefits Eligibility

Comparing an age discrimination case with one brought under title VII or section 1983, the court refused to appoint an attorney for a complainant where there was no more liklihood of successful litigation on his behalf than in the past since he had demonstrated adequate ability to represent himself. ***Salmon v. Corpus Christi Indep. Sch. Dist.***, 911 F.2d 1165 (5th Cir. 1990).

Two teachers who were ineligible for an early retirement plan offered under a collective bargaining agreement solely because they were older than the 55-60 age eligibility period had no ADEA cause of action where the plan was a fringe benefit that did not discriminate in any nonfringe benefit aspect of the employment relationship. ***Cipriano v. Board of Educ. of City Sch. Dist. of City of North Tonawanda, N.Y.***, 772 F. Supp. 1346 (W.D.N.Y. 1991).

A three-year collective bargaining agreement which had a one time early retirement incentive, subsequently eliminated in the next three-year agreement, did not discriminate against a teacher on the basis of age where she was unable to take advantage of the plan under the earlier agreement, since a *bona fide* retirement plan does not violate ADEA simply because it makes age-based distinctives. ***Gabarczyk v. Board of Educ. of City Sch. Dist. of Poughkeepsie***, 738 F. Supp. 118 (S.D.N.Y. 1990).

Handicap

Assignments/Transfers/Leaves of Absence

A teacher of hearing impaired students with AIDS was granted a preliminary injunction to prevent reassignment on the ground that section 504 of the Rehabilitation Act allows the exclusion of an employee only if there is significant risk of communicating an infectious disease. ***Chalk v. United States Dist. Ct. Cent. Dist. of Cal.***, 840 F.2d 701 (9th Cir. 1988).

A school district discriminated against a school bus driver on the basis of physical handicap when it assigned him to a newly created position of night custodian which, because of the heavier demands on his heart, caused him to resign. ***Casino v. Mahopac Cent. Sch. Dist.***, 741 F. Supp. 1028 (S.D.N.Y. 1989).

A school district policy under which staff members with AIDS were to be placed on sick leave or leave of absence whether or not the disease was in remission discriminated against the handicapped under the Wisconsin Fair Employment Act; since the policy was intended to be enforced in a blanket manner, the district was unable to bear the burden of proving its safety concerns on a case by case basis. ***Racine Unified Sch. Dist. v. Labor and Indus. Rev. Comm'n***, 476 N.W.2d 707 (Wis. Ct. App. 1991).

Discharges/Suspensions/Demotions

A teacher whose employment was terminated while she was hospitalized for mental and physical problems and who testified that she would be unable to work in the foreseeable future had no remedy under section 504 of the Rehabilitation Act because she was not otherwise qualified and was, therefore, unable to perform her job with a reasonable accomodation. ***Beauford v. Father Flanagan's Boys' Home***, 831 F.2d 768 (8th Cir. 1987).

A teacher was entitled to an award of Workers' Compensation where there was sufficient evidence that her mental stress injury was caused by her employment as a teacher in a program for gifted and talented children rather than by disciplinary action taken by the school district. ***Caron v. Maine Sch. Admin. Dist. No. 27***, 594 A.2d 560 (Me. 1991).

A school bus driver whose bus license had been revoked because she was diabetic was entitled to have her license reinstated since her diabetic condition had been under control for three years and her blood sugar level could be checked by a simple finger prick blood test without undue hardship to her employer. ***Pennsylvania Dep't of Transp. v. Tinsley***, 564 A.2d 286 (Pa. Commw. Ct. 1989).

A department of transportation's recall of a school bus driver's license because she had suffered a heart attack was not supportive of the charge of incompetency where the driver had periodic stress tests and her doctor testified that she had a lower risk of another heart attack than another person not so tested. ***Appeal of Stober***, 546 A.2d 155 (Pa. Commw. Ct. 1988)

An applicant for a job as a school bus driver could not be prohibited from applying for such a position simply because he had diabetes as long as there was no evidence that his condition impaired his ability to operate a bus. ***Jackson v. State***, 544 A.2d 291 (Me. 1988).

A visually impaired teacher failed to state discrimination under Georgia's equal employment for

handicapped code where she was fired after refusing to report to a newly assigned school 20 miles from her home; the school district had offered her two placements closer to her apartment than the 20 miles but not as close as the one mile, she was unwilling to change apartments, and she refused to consider taking public transportation. ***Allen v. Bergman***, 400 S.E.2d 347 (Ga. Ct. App. 1990).

A school district could not terminate a bus driver solely on the recommendation of its physician without the driver having an opportunity to be examined by a cardiologist. ***Sitler v. New York State Div. of Human Rights***, 520 N.Y.S.2d 653 (App. Div. 1987).

Under New York's human rights law, a school bus driver discharged as medically unfit because she had multiple sclerosis had been improperly terminated due to a covered disability and was entitled to reinstatement and damages; the court accepted the testimony of the driver's physician that the disease was not a danger to bus driving because the symptoms come on gradually over a period of a week or two. ***Bayport-Blue Point School Dist. v. State Div. of Human Rights***, 517 N.Y.S.2d 209 (App. Div. 1987).

Nonrenewals/Lay-offs/Retirements

A school principal, whose contract was nonrenewed for a variety of reasons, including economic factors, a lack of certification, and alcohol-related problems, failed to state a *prima facie* case under section 504 of the Rehabilitation Act because he had not been excluded from his position solely by reason of his handicap. ***Pierce v. Engle***, 726 F. Supp. 1231 (D. Kan. 1989).

Job Qualifications/Hiring Decisions

The Supreme Court ruled that an elementary teacher who had been hospitalized in the past for a contagious disease, tuberculosis, had a record of impairment within the meaning of section 504 of the Rehabilitation Act and was therefore a handicapped person; the case was remanded to decide whether she constituted a significant threat to the school. ***School Bd. of Nassau County, Fla., v. Arline***, 480 U.S. 273 (1987).

On remand from the Supreme Court, the trial court held that the teacher who had occasional relapses of tuberculosis was otherwise qualified because the probability that she would transmit tuberculosis to anyone was so extremely small as to not exist. ***Arline v. School Bd. of Nassau County, Fla.***, 692 F. Supp. 1286 (M.D. Fla. 1988).

A teacher with a learning disability was entitled to a remand in order to determine whether she was otherwise qualified within the meaning of section 504 of the Rehabilitation Act based on whether she could perform the essential functions of her teaching position and whether the requirements imposed by the State Board of Education, notably including a pssing score on the National Teachers Examination, actually measured those functions. ***Pandazides v. Virginia Bd. of Educ.***, 946 F.2d 345 (4th Cir. 1991).

A teacher with multiple sclerosis who had taken disability leave with intent to return to teaching failed to state a cause of action under the Rehabilitation Act where she admitted that it was her understanding that if she returned to school she would be teaching full time. ***Pendleton v. Jefferson Local School Dist. Bd. of Educ.***, 754 F. Supp. 570 (S.D. Ohio 1990).

A teacher who suffered from epileptic-like seizures and could not be reasonably accomodated because her job as an instructional coordinator required her movement throughout the building was not a handicapped person; thus, her suspension and removal was not unlawful. ***Umphries v. Jones***, 804 S.W.2d 38 (Mo. Ct. App. 1991).

An employee who had retired due to psychiatric disability and was denied reinstatement eight years later for the same disability was able to present evidence that he was physically fit for duty; however, he failed to controvert evidence that his continuing psychiatric disability prevented him from performing his activities in a reasonable manner. ***Boleck v. State***, 542 N.Y.S.2d 268 (App. Div. 1989).

Refusal of a school board to hire an individual as a school bus driver because the state would not grant him a license after the district's physician found that he had a spinal problem did not immunize the district from liability; a triable issue was presented because the prospective driver's physician maintained that he was able to drive a bus. Also, the district was denied summary judgment because of possible risk of collusion between it and its physicians regarding employment decisions. ***Wilks v. Taylor Sch. Dist.***, 435 N.W.2d 436 (Mich. Ct. App. 1988).

A school does not have to offer a disabled teacher available and suitable positions if they require student contact and the nature of the teacher's disability would have caused her to reject the offers; also, since her claims were not frivolous, unreasonable, or without foundation, the school district was not entitled to attorney's fees. ***Robinson v. School Dist. No. 1, Multnomah County***, 759 P.2d 1116 (Or. Ct. App. 1988).

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An teacher whose provisional teaching license extension was denied had no claim under the state's human rights law because his condition, multiple sclerosis, did not constitute a disability under the applicable statute. ***New York City Bd. of Educ. v. Division of Human Rights***, 515 N.Y.S.2d 543 (App. Div. 1987).

Benefits Eligiblity

A teacher's widow was not entitled to workers' compensation because her late husband's heart attack, which occurred while he was sitting in a recliner in his home 18 hours after taking a teacher test, was not causally related to the stress surrounding the test. ***Mosley v. McGehee School Dist.***, 816 S.W.2d 891 (Ark. Ct. App. 1991).

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Case Citations
GENDER RELATED DISCRIMINATION

FOURTEENTH Series, Number 3

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Sex Discrimination

General Sex Discrimination

Evidence that a male was paid more than a female office worker under a school board's revised pay schedule was insufficient to establish intentional gender discrimination in violation of title VII where men and women both received annual step increases and she produced no proof that intentional gender discrimination was a factor in the initial assignment of slots to her and the male; however, the case was remanded as she had established a *prima facie* violation under the Equal Pay Act. ***Mitchell v. Jefferson County Bd. of Educ.***, 936 F.2d 539 (11th Cir. 1991).

A plaintiff alleging sex discrimination must establish a *prima facie* case that gender has been taken into account in the selection process, after which the burden of production shifts to the defendant to articulate a legitimate, nondiscriminatory reason for acting; if the defendant does offer legitimate reasons, the plaintiff must then demonstrate that the proffered reason was merely pretext for unlawful discrimination. ***Brousard-Norcross v. Augustana College Ass'n***, 935 F.2d 974 (8th Cir. 1991). *See also*, ***Farber v. Massillon Bd. of Educ.***, 917 F.2d 1391 (6th Cir. 1990); ***University of S. Cal. v. Superior Court (Miller)***, 272 Cal. Rptr. 264 (Cal. Ct. App. 1990); ***Davis v. Halpern***, 768 F. Supp. 968 (E.D.N.Y. 1991).

An instructor at a community college introduced sufficient evidence to give rise to an inference of disparate treatment on the basis of age and sex where she was the only female and one of oldest full-time faculty members in her department, she was subjected to treatment different from that accorded to the rest of the faculty, her superiors referred to her as "an old warhorse" and to her students as "little old ladies," and made other derogatory remarks indicating age and gender bias. ***Sischo-Nownejad v. Merced Community College Dist.***, 934 F.2d 1104 (9th Cir. 1991).

A school guidance counselor failed to establish a course of discriminatory conduct against minorities or women necessary to support a title VII wrongful termination claim where her termination for immorality and other good and just cause was based on her three misdemeanor convictions for offering false instruments under a Medicaid program. ***Allen v. Denver Pub. Sch. Bd.***, 928 F.2d 978 (10th Cir. 1991).

A preliminary injunction was warranted to prohibit the Detroit Board of Education from creating all-male academies where there was the likelihood that female students would succeed on the merits of their claim that the all-male academies violated the Federal and Michigan Constitutions and statutes by discriminating on the basis of gender. Also, a potential irreparable injury to the female students existed in the form of a violation of their equal protection rights, and a great disruption would result if they won their lawsuit and the academies were then aborted. ***Garrett v. Board of Educ. of Sch. Dist. of City of Detroit***, 775 F. Supp. 1004 (E.D. Mich. 1991).

An unsuccessful white male applicant for a law school was denied relief since there is no implied private right of action under state law prohibiting educational institutions from engaging in admissions practices which discriminate on the basis of race, color, sex, religion, creed, marital status, age, or national origin. ***Davis v. Halpern***, 768 F. Supp. 968 (E.D.N.Y. 1991).

A state's maintaining an all male military institute does not discriminate on the basis of gender against females who seek a military style education since the maintenance of such a single-gender school supports the substantial governmental interest of maintaining diversity throughout the state educational system by preserving "adversarial" and "barracks-oriented" educational opportunities which were attainable only by the exclusion of women. ***United States v. Commonwealth of Va.***, 766 F. Supp. 1407 (W.D. Va. 1991).

A female faculty member who was subjected to discrimination and retaliation for promoting women's rights in her department and for filing complaint with the EEOC was entitled to back pay and front pay at rate of salary she would have received if she had been continuously employed as well as to recover for lost fringe benefits that would have accrued but for discrimination; however, the university was entitled to an offset for the temporary total and permanent disability payments she received. ***Austen v. State of Haw.***, 759 F. Supp. 612 (D. Haw. 1991).

Even if an employee establishes that an employer's stated reasons for acting were mere pretexts for sex discrimination, the employer may not be held liable under title VII if it can prove that it would have made same decision if employee's sex had not been taken into account. ***Wilson v. University of Tex. Health Ctr. at Tyler***, 733 F. Supp. 958 (E.D. Tex. 1991).

Even if it is conflicting, where substantial evidence supports a Commission's conclusions in a sex discrimination case, a court must defer to the fact finding function of a single commissioner. ***Northeast Metro. Regional Vocational Sch. Dist. School Comm. v. Massachusetts Comm'n Against Discrimination***, 575 N.E.2d 77 (Mass. App. Ct. 1991).

Evidence that a female member of the National Honor Society was dismissed for engaging in premarital sex (and subsequently becoming pregnant) even

though a male member was not punished for engaging in premarital sex was possibly relevant and should have been considered on the question of whether the members of a faculty council had a double standard and intentionally discriminated against the female student who became pregnant and was dismissed. ***Pfeiffer by Pfeifer v. Marion Ctr. Area Sch. Dist., Bd. of Sch. Directors for the Marion Ctr. Area Sch. Dist.***, 917 F.2d 779 (3d Cir. 1990).

Where female undergraduate students brought claims of gender discrimination against eating clubs open only to males, the clubs were subject to the same law against gender based discrimination as the university based on their symbiotic relationship to the university. ***Frank v. Ivy Club***, 576 A.2d 241 (N.J. 1990).

In establishing a *prima facie* case of sex discrimination in employment, an inference of unlawful discrimination cannot automatically be made when discrimination is against men rather than women. ***Kansas State Univ. v. Kansas Comm'n on Civil Rights***, 796 P.2d 1046 (Kan. Ct. App. 1990).

Where a female student's allegations that a university professor stared at her during chance public encounters in restaurants without more did not rise to the level of a title IX violation for sexual discrimination, her failure to allege any actionable violations within the statutory time period led to a dismissal of her claims; also, her section 1983 claim against the professor for allegedly making unwelcomed sexual advances and against the university for failing to adequately process her complaints was time barred by Pennsylvania's two year statute of limitations for personal injury actions since the offenses occured more than two years prior to the filing of her complaint. ***Bougher v. University of Pittsburgh***, 882 F.2d 74 (3d Cir. 1989).

Where a male teacher who wrote a letter to a school newspaper satirically responding to allegations of sexual discrimination against female students in a physical education program, the fact that his letter addressed a matter of public concern should have been taken into account in determining whether the resulting loss of his increment pay raise violated his First Amendment rights. ***Seemuller v. Fairfax County Sch. Bd.***, 878 F.2d 1578 (4th Cir. 1989).

An Equal Employment Opportunities Commission (EEOC) complaint in which a faculty member alleged that suggestions had been made to her husband, also a faculty member, that he would be happier teaching elsewhere because of her pending sex discrimination suit against the university were reasonably related to her subsequent complaint in federal district court alleging various acts of retaliation against her so that these claims could be considered even though they were included in the EEOC charge. ***Wu v. Thomas***, 863 F.2d 1543 (11th Cir. 1989).

Female high school students who alleged that New York's exclusive reliance on the Scholastic Aptitude Test to award scholarships discriminated against them on the basis of gender were granted class status and their suit was permitted to continue. ***Sharif by Salahuddin v. New York State Educ. Dep't***, 127 F.R.D. 84 (S.D.N.Y. 1989).

Where two male teachers were granted educational leaves and another male was granted relief from administrative assignment there was no inference of sex discrimination against a female teacher who sought a one semester extension of a one year educational leave previously granted and relief from an administrative assignment; her requests were significantly different since she was not seeking an initial leave, the needs of their departments were different, and she had been granted one semester of administrative relief following her return from a leave even though this was without precedent. ***Baker v. Board of Educ. of W. Irondequoit Cent. Sch. Dist.***, 550 N.Y.S.2d 762 (App. Div. 1989).

Hiring

A court's taking excerpts from an earlier decision ordering the merger of two postsecondary institutions to form a single community college was appropriate where a job applicant alleged that the community college denied her a position based on age and gender; the college's legitimate, nondiscriminatory reason for not hiring her turned on the requirement, stated in the previous decision, that hiring preference be given to those on the payroll of the institutions which merged. ***Burns v. Gadsden State Community College***, 766 F. Supp. 1049 (N.D. Ala. 1991).

A community college was granted summary judgment where an applicant for a position as director of grants failed to establish either that the legitimate, nondiscriminatory reasons proffered for her nonselection, namely, her failure to obtain an interview score among the top three or that applicants was a pretext for discrimination on basis of race or sex. ***Mitchell v. Peralta Community College Dist.***, 766 F. Supp. 834 (N.D. Cal. 1991).

A female teacher was not improperly denied a coaching position based on her sex where the evidence showed that excessive absenteeism, given as a reason for denying her the position, was not a mere pretext for sex discrimination. ***New Paltz Cent. Sch. Dist. v. State Div. of Human Rights***, 577 N.Y.S.2d 510 (App. Div. 1991).

Where a female applicant for a position as superintendent-director established an unrebutted *prima facie* case of sex discrimination based on statements of school committee members concerning selec-

tion of a new superintendent, she was entitled to an award of back pays. ***Northeast Metro. Regional Vocational Sch. Dist. Comm. v. Massachusetts Comm'n Against Discrimination***, 575 N.E.2d 77 (Mass. App. Ct. 1991).

A suit alleging sex discrimination under title VII filed by a female teacher who was denied a position as a principal was reinstated where a male who lacked the minimal qualifications for the position was only rendered qualified by the reduced qualifications posted by the administration when the vacancy was announced. ***Farber v. Massillon Bd. of Educ.***, 917 F.2d 1391 (6th Cir. 1990).

The failure to apply for a position as an elementary school counselor barred a teacher from establishing a *prima facie* case of gender and race discrimination under title VII where she admitted that even though she did not know the exact hiring dates for the positions, she was aware that the district sought to employ two additional counselors to meet state requirements; also, at time of the hirings, adiminstrators in the district had no knowledge of teacher's desire to become a counselor. ***Chambers v. Wynne Sch. Dist.***, 909 F.2d 1214 (8th Cir. 1990).

A school district proffered a legitimate, nondiscriminatory reason for hiring a female rather than a male applicant for a position as procurement manager for a minority business enterprise program where the female's work experience was superior to the male's. ***Collins v. School Dist. of Kansas City, Mo.***, 727 F.Supp. 1318 (W.D. Mo. 1990).

A petition seeking the recall of school board officials because they discriminated against a male when they hired a female candidate as a school principal was legally and factually insufficient where the allegation of sexual discrimination was merely a conjectural conclusion unsupported by any of the facts set forth in the petition. ***In re Recall of Wade***, 799 P.2d 1179 (Wash. 1990).

A tenured female faculty member was unable to establish that a college discriminated against her when it hired a male after she rejected a contract containing unacceptable employment conditions; she had initially accepted an offer of part-time employment but the male negotiated for and accepted only full-time employment. ***Ohio Dominican College v. Krone***, 560 N.E.2d 1340 (Ohio App. 1990).

A statute which provides that it is not an unlawful employment practice for an employer or labor organization to observe the terms of a *bona fide* seniority system does not apply to a seniority system which discriminates against teachers on the basis of sex. ***Lynn Teachers Union, Local 1037, AFT, AFL-CIO v. Massachusetts Comm'n Against Discrimination***, 549 N.E.2d 97 (Mass. 1990).

Where an unsuccessful applicant for a position as headmaster at a public high school and the school committee reached a settlement, she was entitled to an evidentiary hearing since the terms of settlement agreement were not clear enough to warrant summary enforcement through a preliminary injunction. ***Hamilton v. School Comm. of the City of Boston***, 725 F. Supp. 64 (D. Mass 1989).

Substantial compliance with a consent decree resolving a case of employment discrimination between a university and its faculty requiring full utilization of women on the faculty embodied the concept that women should be represented on the tenured faculty in direct proportion to the percentage of women in the relevant availability pools; also, achieving 90% of full representativeness goals would be substantial compliance signaling the termination of the consent decree. ***Lamphere v. Brown Univ.***, 712 F. Supp. 1053 (D.R.I. 1989).

A female teacher who was denied an administrative position made out a *prima facie* case of sexual discrimination where she had greater seniority than the men hired for the positions and she presented evidence of statistical gender disparity between teachers and administrators. ***Perilli v. Board of Educ. Monongalia County***, 387 S.E.2d 315 (W. Va. 1989).

Where a black teacher who had been a candidate for a position as a dean brought suit alleging discrimination on the basis of age and sex, summary judgment against his claims was properly granted since his failure to file suit within 90 days of receing an EEOC right-to-sue letter was mandatory and jurisdictional. ***Mitchell v. Los Angeles Community College Dist.***, 861 F.2d 198 (9th Cir. 1988).

Where a school teacher filed suit against a school district and others claiming that her demotion from a position as kindergarten principal was based on sexual discrimination in violation of title VII because its of its decision to rehire a male assistant principal was timely filed as it was within 180 days of the rehiring of the male; also, the existence of material facts as to whether her initial visit with the EEOC tolled the 180 day filing requirement on her complaint rendered subsequent amendments timely and precluded summary judgment for the district. ***Cobb v. Stringer***, 850 F.2d 356 (8th Cir. 1988).

Where a female applicant for a position as Assistant Superintendent of Instruction filed suit under title VII and section 1983, the district did not breach its promise to give women favored treatment in employment decisions because that policy applied only if a

female applicant was as qualified as a male and here the woman ranked third out of the four applicants. ***Yatvin v. Madison Metro. Sch. Dist.***, 840 F.2d 412 (7th Cir. 1988).

A high school athletic director's service as head football coach was not a legitimate, nondiscriminatory reason for excluding a female physical education teacher from consideration for the position of athletic director and was not a *bona fide* occupational qualification where no job-related nexus existed between the requirement that the head football coach serve as athletic director since he coach could continue to perform public relations or fundraising functions while another individual could perform the primarily administrative duties of athletic director; also, the positions of head football coach and athletic director had, in the past, been separated and were separated in other high schools. ***Wynn v. Columbus Mun. Separate Sch. Dist.***, 692 F. Supp. 672 (N.D. Miss. 1988).

Where a female applicant successfully challenged a board of education's refusal to hire her on the basis of sex, an upward adjustment of 100% was appropriate to compensate her attorneys since the trial required a sophisticated understanding and presentation of complex principles of law and substantial amount of evidence. ***Hidle v. Geneva County Bd. of Educ.***, 681 F. Supp. 752 (M.D. Ala. 1988).

Where a male applicant for a position as a school cook established a *prima facie* case of disparate treatment based on gender by showing that the qualifications of the woman who was hired for the position he sought and was denied were equal to or less than his, he was entitled to protection under the state Human Rights Act. ***Ridler v. Olivia Pub. Sch. Sys. No. 653***, 432 N.W.2d 777 (Minn. Ct. App. 1988).

Promotion, Tenure & Evaluations

Common-law privilege was not recognized to protect peer review materials from disclosure where a female professor who was denied tenure brought a title VII race and sex discrimination action against the university. ***University of Pa. v. EEOC***, 493 U.S. 182 (1990).

Where a female professor who was denied tenure brought an unsuccessful gender discrimination action against university, the reduction of her lead counsel's hourly rate based on the alleged deficiency in the attorney's performance constituted an abuse of discretion where she did prevail on a related salary claim pursuant to a settlement between the parties. ***Nanetti v. University of Ill.***, 944 F.2d 1416 (7th Cir. 1991).

An assistant professor who alleged sexual discrimination under title VII failed to establish that proffered reasons for her being denied tenure, namely, negative student evaluations and negative recommendations from colleagues, were pretextual; it was not for court to determine amount of negative student feedback justifying tenure denial and none of three department chairpersons, including the only female chair, supported her tenure application. ***Brousard-Norcross v. Augustana College Ass'n***, 935 F.2d 974 (8th Cir. 1991).

An associate professor who alleged she was discriminatorily denied a promotion from a contract position to a tenure-accruing position and to full professor was not required to show, as part of her *prima facie* case, that the university was actively seeking full, tenured professors in her department. ***Saunders v. George Washington Univ.***, 768 F. Supp. 854 (D.D.C. 1991).

Evidence of professor's inability to follow a community college's rules, as well as his failures to appear in class, to file grades in a timely fashion, and to make arrangements for his classes to be covered during his absences supported a finding that his denial of a promotion to full professor was the result of nondiscriminatory reasons and not the fact that he was an Indian Asian male in a department in which males were a minority. ***Sinha v. State Univ. of N.Y. at Farmingdale***, 764 F. Supp. 765 (E.D.N.Y. 1991).

Continuing efforts of a Faculty Advisory Committee acting on behalf of a professor who was denied tenure, allegedly as result of sex discrimination, and advice of University Ombudsman's to exhaust internal procedures prior to seeking internal remedy, did not create genuine issues of material fact with regard to waiver, estoppel, and equitable tolling that would preclude summary judgment that her claim was barred by her failure to file a timely complaint with the EEOC. ***Faulkner-King v. Board of Trustees of Univ. of Ill.***, 757 F. Supp. 951 (C.D. Ill. 1991).

A university's proffered reason for its denial of tenure to a female faculty member who brought a title VII action based on alleged discriminatory denial of tenure, that she failed to demonstrate required scholarship, if authentic, was nondiscriminatory and sufficient to deny her tenure. ***Jackson v. Harvard Univ.***, 900 F.2d 464 (1st Cir. 1990).

A female teacher who was intentionally discriminated against when she was passed over for promotion on at least four out of eight instances in which she applied for administrative positions in junior or senior high schools was entitled to both front and back pay. ***Willis v. Watson Chapel Sch. Dist.***, 749 F. Supp. 923 (E.D. Ark. 1990).

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Where a tenured female associate professor proved that bias against her on the basis of sex play a significant role in a majority vote of senior faculty members not to recommend her for a promotion to full professor, the appropriate remedy was to order her promotion with back pay for the time she was improperly denied the promotion for which she was qualified. ***Jew v. University of Iowa***, 749 F. Supp. 946 (S.D. Iowa 1990).

A university met its burden of producing a nondiscriminatory reason for its failure to promote a female instructor to assistant professor based upon her insufficient activity in professional organizations even though males were appointed assistant professors without being active in professional organizations; the males had been promoted five years earlier and activity in professional organizations was considered to be a more critical factor for promotion at that time. ***Board of Regents for Regency Univ. v. Human Rights Comm'n***, 552 N.E.2d 1373 (Ill. App. Ct. 1990).

A state university properly terminated a grievance brought by a black female extension agent who alleged that her lower than normal performance evaluations were due to sex and race discrimination after she wrote a letter to a United States Senator concerning irregularities in her hearing did not violate her First Amendment right to free speech; the university's interest in maintaining its formal, closed grievance procedure outweighed whatever interest she had in writing to the Senator. ***Kemp v. State Bd. of Agric.***, 803 P.2d 498 (Colo. 1990).

A university committee did not discriminate against an associate professor on the basis of gender when it denied her promotion to full professorship because even though it evaluated her record as feminist scholar in some detail, committee records did not indicate that gender was considered; rather, it criticized her scholarship, allocation of time, choice of journals, service, teaching, and letters of recommendation, and there was no substantial evidence that reasons given were merely pretextual. ***University of S. Cal. v. Superior Court (Miller)***, 272 Cal. Rptr. 264 (Cal. Ct. App. 1990).

A university could be ordered to reinstate a tenure candidate with tenure as remedy under title VII for sex discrimination; to deny tenure due to the intrusiveness of the remedy and because of the university's interest in making its own tenure decisions would frustrate title VII's purpose of making persons whole for injuries suffered through past discrimination. ***Brown v. Trustees of Boston Univ.***, 891 F.2d 337 (1st Cir. 1989).

A title VII suit brought by female professors failed where the evidence supported a determination that there was no discrimination in placement into initial rank or promotion at a state university during time of the alleged employment discrimination on the basis of sex. ***Ottaviani v. State Univ. N.Y. at New Paltz***, 875 F.2d 365 (2d Cir. 1989).

An alleged disciplinary transfer of a black female, nontenured administrative employee of city university was not employment discrimination on the basis of her sex where affidavits demonstrated that she was transferred because of her persistent tardiness and insubordination, that she had been sent a series of pretransfer memoranda recording her tardiness and warning her against repetition, and a male employee had received similar reprimands. ***Ritzie v. City Univ. of N.Y.***, 703 F. Supp. 271 (S.D.N.Y. 1989).

A community college professor was properly denied a promotion to a position as a departmental chair where even though she had made out *prima facie* case of sex discrimination, the college had legitimate business reasons for denying the promotion since she created administrative difficulties by failing to adhere to hiring and purchasing procedures, by taking unauthorized vacations, and by deviating from procedures for obtaining travel reimbursements; also, she further provoked the ire of the administration through alleged falsification of a supervisor's signature on a work requisition, use of campus duplicating facilities for personal project, and teaching at another community college without proper authorization. ***Roberts v. College of the Desert***, 861 F.2d 1163 (9th Cir. 1988).

Where evidence supported a conclusion that university department chairs and a tenure committee intentionally discriminated against a female professor on the basis of gender, causing a negative tenure recommendation, she was presumptively entitled to back pay; however, as the court was unable to determine whether she should have been reinstated with tenure, the case was remanded. ***Gutzwiller v. Fenik***, 860 F.2d 1317 (6th Cir. 1988).

Where a female research toxicologist at a university was denied a promotion on the basis of her sex while three males with much less tenure were promoted to supervisory positions, the university's proffered reason for her nonpromotion, that she was unable to get along with her fellows, was pretextual. ***Bruhwiler v. University of Tenn.***, 859 F.2d 419 (6th Cir. 1988).

A determination that a female associate professor who was denied a promotion failed to establish a *prima facie* case of sex discrimination was not clearly erroneous; she failed to show that she was qualified for the promotion or that an equally or less qualified male was promoted to the rank professor during the relevant time. ***Wu v. Thomas***, 847 F.2d 1480 (11th Cir. 1988).

A female assistant coach failed to show that the reasons proffered by a university for its failure to promote her were a pretext for discrimination where there was evidence that university based its decision on programmatic needs rather than on an individual evaluation of the assistant coach's performance. ***Sennewald v. University of Minn.***, 847 F.2d 472 (8th Cir. 1988).

A female teacher established that she was passed over for promotion to administrative positions on the basis of sex in violation of title VII where she was better qualified than males who were appointed to each of the positions and there was direct evidence of discriminatory animus in the form of statements by the school superintendent that he wanted someone who could instill "the discipline of a football coach" and that he "needed a man up there." ***Spears v. Board of Educ. of Pike County, Ky.***, 843 F.2d 882 (6th Cir. 1988).

Laches did not apply to bar a title VII suit brought by a professor who challenged her denial of tenure because even though she was responsible for some delay in pursuing an EEOC complaint, she kept in touch with the administrative agencies on several occasions and the college and other defendants failed to make an adequate showing of prejudice resulting from personnel changes and failure to preserve evidence during period of delay. ***Kawatra v. Medgar Evers College of the City Univ. of N.Y.***, 700 F. Supp. 648 (E.D.N.Y. 1988).

A female employee failed to establish a *prima facie* case of sex discrimination where there was no credible, direct evidence that person who conducted interviews of applicants for promotion made a remark to the effect that some male employees would not want to work for a female supervisor. ***Mira v. Monroe County Sch. Bd.***, 687 F.Supp. 1538 (S.D. Fla. 1988).

Where a professor who has been denied tenure shows that some significant portion of faculty or other scholars favored her tenure, and that there was simultaneous promotion of males, it may constitute *prima facie* evidence of sex discrimination, sufficient to shift burden in title VII action to the institution. ***Orbovich v. Macalester College***, 119 F.R.D. 411 (D. Minn. 1988).

A provision in the collective bargaining agreement between a university and its professors, which restricted access to personnel files to named persons, did not preclude the evidentiary use of peer review materials in a sex discrimination action brought on behalf of a female assistant professor who was denied promotion and tenure; since the Division of Civil Rights had a completely separate law enforcement interest in prosecuting alleged discrimination and does not merely act as professor's attorney or stand in her shoes, it was not bound by the terms of the contract. ***Dixon v. Rutgers, The State Univ. of N.J.***, 541 A.2d 1046 (N.J. 1988).

Termination

A former public safety officer at a university who was intentionally discriminated against during her employment and was subject to retaliation for having filed a complaint was awarded an amount representing the back pay she would have earned in the position from which she was improperly dismissed, minus mitigation and subject to 50% reduction based on her falsification of a material fact on her application for job from which she was fired. ***Milligan-Jensen v. Michigan Tech. Univ.***, 767 F. Supp. 1403 (W.D. Mich. 1991).

A female medical student who was discharged from a surgical residency program as a result of sex discrimination was entitled to damages consisting of the income she would have received had she continued in the program as well as for mental suffering; however, she was not entitled to reinstatement in light of the tense relationships which would exist and which could lead to a potentially explosive situation in a context where people's lives were at stake on a daily basis. ***Lipsett v. University of P.R.***, 759 F. Supp. 40 (D.P.R. 1991).

Where an administrative law judge determined that a former female grounds keeper at a university was discriminatorily discharged on the basis of her sex, there was sufficient evidence that the university had encouraged students to fabricate testimony as well as to cover up sexual discrimination so as to justify punitive damages. ***State by Cooper v. Moorehead State Univ.***, 455 N.W.2d 79 (Minn. Ct. App. 1990).

A title VII action did not preclude a section 1983 claim brought by a teacher who alleged that her employment contract was not renewed because of sex discrimination. ***Suber v. Bulloch County Bd. of Educ.***, 722 F. Supp. 736 (S.D. Ga. 1989).

A university's decision not to reappoint a female academic coordinator for its athletic department was not based on her sex but on the legitimate nondiscriminatory reason that it wanted a tougher disciplinarian who could command respect and dedication of all players while developing harmonious working relationships with faculty, staff, and others on campus. ***Gray v. University of Ark. at Fayetteville***, 883 F.2d 1394 (8th Cir. 1989).

A female professor who was discriminatorily terminated from her teaching position in violation of her title VII rights was properly reinstated; however, the

trial court abused its discretion in ordering her reappointment as a full professor with tenure since it did not appear that she would have attained tenure automatically. ***Ford v. Nicks***, 866 F.2d 865 (6th Cir. 1989).

Termination of female faculty member's position as a special assistant to a state university president did not constitute sex discrimination absent direct evidence of discrimination where she could not show disparate treatment; she was the only person to have held the position and the university president maintained that her removal was based upon his realization that he had no real need for it. ***Moore v. Alabama State Univ.***, 864 F.2d 103 (11th Cir. 1989).

A sex discrimination claim brought by a secretary at a university accrued on the date she was terminated and escorted from campus; thus, her subsequent reinstatement to a lower position, transfer, and termination were not continuous or connected acts that would constitute a continuing violation for the purpose of filing a charge with the EEOC. ***Wimberg v. University of Evansville***, 761 F. Supp. 587 (S.D. Ind. 1989).

Where a female guidance counselor learned that her discharge was based on allegedly discriminatorily-motivated unsatisfactory performance ratings, her suit was dismissed due to her failure to take set ups to become aware of her employment status for more than a year after her discharge, even though she claimed that she thought she was only laid off. ***Kapusta v. Rockwood Area Sch. Dist.***, 732 F. Supp. 576 (W.D. Pa. 1989).

Where a female teacher alleged that a school failed to renew her contract in retaliation for her previously having filed a charge of sex discrimination, the burden of proof was improperly placed upon the school to establish that retaliation played no part in its decision; she should have been required to prove that but for retaliation her contract would not have been terminated. ***Indiana Civil Rights Com'n v. Culver Educ. Found.***, 535 N.E.2d 112 (Ind. 1989).

Where a nontenured teacher at a vocational center established a *prima facie* case that her dismissal was because of her sex, her suit was actionable; also, she could also bring suit against individual members of the center's board of control. ***Dunlop v. Colgan***, 687 F. Supp. 406 (N.D. Ill. 1988).

Pay

Where a non-public school failed to show that a salary differential between male and female teachers was based on factors other than sex, it was responsible for awards of back pay for female teachers despite its contention that the differential was based on marital status. ***Dole v. Shenandoah Baptist Church***, 899 F.2d 1389 (4th Cir. 1990).

Four separate non-public schools of the same religious denomination violated the Equal Pay Act where female faculty members with dependents did not receive the same allowance as did males. ***EEOC v. Tree of Life Christian Sch.***, 751 F. Supp. 700 (S.D. Ohio 1990).

Female members in a university academic division of professional and administrative staff who established a *prima facie* case of employment discrimination in pay on the basis of sex were presumptively entitled to back pay and such equitable relief as was necessary to put them in their rightful place. ***Wilkins v. University of Houston***, 725 F. Supp. 331 (S.D. Tex 1989).

A wage differential between elementary and high school principals in the New York City public school system was not unlawful gender discrimination on the theories that because as women they were paid less for supervising predominantly female teachers or that the wage differential devalued elementary school principals because of the historical perception that elementary schools were traditionally female institutions and their principalships were traditionally female jobs; there was no factual pattern showing contempt for women since elementary school teachers were paid the same as high school teachers, and the mere fact that a lower paid job was traditionally female was not enough to establish a title VII violation. ***Siegel v. Board of Educ. of City Sch. Dist. of City of N.Y.***, 713 F. Supp. 54 (E.D.N.Y. 1989).

A male teacher whose retirement pension benefits were calculated on a gender-based actuarial table was entitled to the difference between the amount he received and the amount he would have received had his benefits been calculated according to the unisex table adopted by the State Teachers Retirement Board as this was the remedy he sought and, absent a proper amendment authorizing broader relief, the hearing officer could fashion a remedy only within the confines of the complaint. ***State v. Commission on Human Rights and Opportunities***, 559 A.2d 1120 (Conn. 1989).

Unlawful employment discrimination in the form of compensation disparity based upon a prohibited factor such as race, gender, or national origin is a "continuing violation" so that there is a present violation of the law for as long as such disparity exists; thus, a complaint based upon allegedly unlawful compensation disparity is timely if filed within the statutory limitation after the disparity last occurred. ***West Virginia Inst. of Tech. v. West Virginia Human Rights Comm'n***, 383 S.E.2d 490 (W. Va. 1989).

Where a female professor unsuccessfully brought suit under the Equal Pay Act alleging discriminatory salary determinations, a parol evidence instruction did not prejudice her case so as to warrant reversal; also, the denial of her untimely motions for recusal of the judge did not constitute an abuse of discretion. ***Willner v. University of Kan.***, 848 F.2d 1020 (10th Cir. 1988).

A female associate professor who unsuccessfully brought an action against a university for employment discrimination and for violating the Equal Pay Act was denied relief where the trial court acted within its discretion in refusing to exercise pendent jurisdiction over her state law claims on the ground that additional legal theories would increase the liklihood of jury confusion and the dismissal would promote judicial economy and fairness to all litigants. ***Wu v. Thomas***, 847 F.2d 1480 (11th Cir. 1988).

Female physicians on the faculty of a university's college of medicine who alleged sexual discrimination were not barred from raising a claim of disparate impact against the university because they failed to raise it until midway through the trial; although they may not have used the term "disparate impact," the university was fully aware that their claim consisted of the central allegation that its system of guideline salary increases left them perpetually behind their male counterparts on the faculty by continuing pretitle VII salary discrimination. ***Sobel v. Yeshiva Univ.***, 839 F.2d 18 (2d Cir. 1988).

Where the jobs of male regional directors of university alumni association in New York and New England were not substantially equivalent to the position of the female regional director in Cambridge, the pay differential between the male and female regional directors did not violate title VII. ***Seligson v. Massachusetts Inst. of Tech.***, 677 F. Supp. 648 (D. Mass. 1987).

Sexual Harrassment

General Sexual Harassment

A female high school student who was subjected to sexual harassment and abuse could seek monetary damages under title IX for intentional gender-based discrimination where the equitable remedy of prospective relief was clearly inadequate since the subject teacher no longer taught at that school and she no longer attended school in that system. ***Franklin v. Gwinnett County Pub. Sch.***, 112 S. Ct. 1928 (1992).

A female student's claims under section 1983 and title IX filed in a state court action alleging that she had been subjected to sexual molestation and/or abuse by former teacher were barred in light of federal court actions filed on her behalf where both actions arose from the common wrong inflicted upon her by the teacher. ***Franklin v. Gwinnett County Pub. Sch.***, 407 S.E.2d 78, (Ga. Ct. App. 1991).

A female assistant professor unsuccessfully alleged that her contract was not renewed because she reported alleged incidents of sexual harassment by her immediate supervisor where she failed to establish a *prima facie* case of retaliatory discharge; she could not prove a causal connection between her report and the decision, approximately one year later by two separate committees and the dean, not to renew her contract. ***Garvey v. Dickinson College***, 775 F. Supp. 788 (M.D. Pa. 1991).

A former police officer at a university hospital failed to show that she had been discharged in retaliation for filing a prior claim of sexual harassment where there was ample evidence that her discharge was based on her filing a false report alleging that another female employee had been sexually harassed. ***Wilson v. University of Tex. Health Ctr. at Tyler***, 773 F. Supp. 958 (E.D. Tex. 1991).

Where a former administrative assistant who had been employed by a state university filed action under title VII, section 1983, and state law for sexual harassment, retaliation, constructive discharge, and a due process violation, a supervisor's allegedly slapping her on the buttocks could amount to actionable sexual harassment, but genuine issues of material fact precluded summary judgment on whether the university could be held liable for the supervisor's actions or whether she was a victim of retaliation for having complained about the sexual harassment. However, since her employment contract contained an express expiration date, she did not have a due process property interest in being reappointed. ***Campbell v. Board of Regents of State of Kan.***, 770 F. Supp. 1479 (D. Kan. 1991).

Where an office worker in a Department of Military Science alleged that she was harassed on account of her sex, her claims of violations of the state's Fair Employment Practices Act were denied on the ground that the officer against whom she brought the action was entitled to qualified immunity; however, her claim for intentional interference with her contractual relationship with her employer was permitted to continue. Also, there is no clearly established constitutional right to privacy to be free from sexual harassment. ***McHugh v. University of Vt.***, 758 F. Supp. 945 (D. Vt. 1991).

Where a teacher failed to show that her principal's sexual advances were motivated by intent to harass simply because she was a woman and not by characteristics which were personal to her, she was unsuccessful in her section 1983 action; also, since the

school board had adequately responded to her complaint of sexual harassment by investigating her complaint and offering her a transfer to another school even though it concluded that their relationship was consensual, it was not liable to the teacher under a civil rights conspiracy statute. ***Trautvetter v. Quick***, 916 F.2d 1140 (7th Cir. 1990).

Where a female former vocational counselor who brought suit for gender discrimination and retaliatory discharge against the technical center at which she worked was improperly denied an opportunity to introduce evidence regarding specifics of sexual harassment allegedly directed at her and others, she was entitled to produce additional evidence to attempt to establish the existence of an atmosphere which condoned sexual harassment in the workplace, thereby increasing the likelihood of retaliation for complaints in individual cases. ***Hawkins v. Hennepin Tech. Ctr.***, 900 F.2d 153 (8th Cir. 1990).

An assistant professor failed to prove that sexual harassment, retaliation, and discrimination prevented her from meeting the requirements for contract renewal where she offered no evidence either that she performed tenure-quality work prior to the alleged discriminatory treatment or of her ability to perform adequately outside of the allegedly sexually harassing university environment. ***King v. Board of Regents of Univ. of Wis. Sys.***, 898 F.2d 533 (7th Cir. 1990).

In an action related to the previous case, an assistant professor's unsuccessful sex discrimination suit was sufficiently related to her successful sexual harassment claim so as to permit her an award of costs for deposing several parties to the suit and for an expert witnesses. ***King v. Board of Regents of Univ. of Wis. Sys.***, 748 F. Supp. 686, (E.D. Wis. 1990).

Where a female professor brought a civil rights action against against various individuals associated with the university who allegedly conspired to commit and committed various acts of harassment and retaliation against her for bringing a sex discrimination claim, collateral estoppel barred her from doing so since her action was based on the same set of facts as an earlier employment discrimination suit that she had brought. ***Willner v. Budig***, 848 F.2d 1032 (10th Cir. 1989).

The terms of a university's policy on discrimination and discriminatory harassment of students which prohibited "stigmatizing or victimizing" individuals or groups on a variety of characteristics including sex and sexual orientation, were so vague that its enforcement violated due process. ***Doe v. University of Mich.***, 721 F. Supp. 852 (E.D. Mich. 1989).

A female former school adminsitrator whose position was terminated after she ended a sexual relationship with an assistant principal who was subsequently promoted to principal was unable to establish "*quid pro quo* sexual harassment" because she failed to show that he threatened to punish her if some form of erotic engagement was denied. ***Keppler v. Hindsdale Township High Sch. Dist. 86***, 715 F. Supp. 862 (N.D. Ill. 1989).

Where a black female custodian was allegedly sexually harassed by a supervisor, the harassment was not imputable against the school district since there was no evidence of pervasive harassment that the district knew or should have known and it had conducted a prompt and thorough investigation which reached the conclusion that the problem was based on personality differences. ***Fisher v. Tacoma Sch. Dist. No. 10***, 769 P.2d 318 (Wash. Ct. App. 1989).

A title VII action brought by a former part-time instructor who alleged sexual harassment and retaliation because she rejected sexual advances from her supervisor was dismissed where there was ample evidence that the community college had presented legitimate reasons for not offering her additional employment, including a reduced need for part-time faculty and the availability of more qualified and highly trained instructors; however, genuine issues of material fact precluded summary judgment on whether she was sexually harassed for the purposes of section 1983. ***Long v. Laramie County Community College Dist.***, 840 F.2d 743 (10th Cir. 1988).

Where an award of $150,000 to a former university employee who had been unlawfully terminated and had been subjected to persistent daily sexual harassment was found to be excessive, it was reduced to $100,000. ***SUNY College of Environmental Science and Forestry v. State Div. of Human Rights***, 534 N.Y.S.2d 270 (App. Div. 1988).

Immoral Conduct/Improper Sexual Contact

Where a tenured male teacher/coach engaged in immoral conduct by writing overtly sexual letters to two female students and his conduct was found to be irremediable, he could be dismissed for cause without written warning. ***Board of Educ. of Sparta Community Unit Sch. Dist. 140 v. State Bd. of Educ.***, 577 N.E.2d 900 (Ill. App. Ct. 1991).

The conviction of a male teacher of sexual battery of a female student was reversed where his role as supervisor of her in school suspension was not sufficient to constitute intimidation necessary to support such a conviction absent evidence that he used his position to threaten the alleged victim with disciplinary

action or other adverse consequences to accomplish his goal. ***Clark v. Commonwealth of Va.***, 408 S.E.2d 564 (Va. Ct. App. 1991).

Evidence against a male high school principal was not so unreasonable or improbable as to warrant a reversal of his convictions on multiple counts of official misconduct and indecent liberties with children, even though he impeached testimony of some witnesses with respect to dates, times and other inconsistencies since their testimony was otherwise clear, specific, and detailed as to what sexual improprieties he had committed against each of them. ***People v. Moffat***, 560 N.E.2d 352 (Ill. App. Ct. 1990).

Where parents of elementary school children filed suit against a school district under section 1983 over sexual molestation committed by a teacher during a summer vacation when he was engaged in fund raising activities for a summer basketball camp, his acts were too remote a consequence of the district's established procedure in investigating and hiring teachers to impose civil liability upon it; also, the policy did not reflect deliberate indifference to or reckless disregard for the rights of the students even though shortly after the teacher's hiring the school superintendent received a report that he had molested a nonstudent, that rumors concerning his sexual misconduct and homosexuality had circulated for a short period, and that teacher had been convicted of sodomy in another state ten years before his hiring. ***D.T. by M.T. v. Independent Sch. Dist. No. 16 of Pawnee County, Okla.***, 894 F.2d 1176 (10th Cir. 1990).

Where a former student brought suit against his former fifth grade teacher and the school district alleging child abuse 13 years earlier, the statute providing the claim, which stated that such a claim does not arise until the victim knew or had reason to know his injury was caused by abuse, applied retroactively to all claims pending at the time it became effective; thus, his claim was remanded for trial. ***K.E. v. Hoffman***, 452 N.W.2d 509 (Minn. Ct. App. 1990).

A school superintendent and high school administrators who were in a special relationship with and had a duty to protect a female high school student from sexual assault by a teacher/band director should have known that their conduct toward her allegations of sexual abuse by the teacher/band director violated her substantive due process right to be free from intrusions into her personal privacy and bodily integrity; thus, they were not entitled to qualified immunity in the student's section 1983 suit. ***Sowers v. Bradford Area Sch. Dist.***, 887 F.2d 262 (3d Cir. 1989).

A principal and assistant principal were not entitled to qualified immunity from liability in a civil rights action brought by a former student who was sexually assaulted by a teacher where they allegedly condoned sexual misconduct by teachers and school employees, where there was testimony that they discouraged and minimized reports of sexual misconduct by teachers, and where the jury could reasonably conclude that the conduct communicated condonation of misconduct; however, the superintendent was entitled to qualified immunity since there he committed no affirmative acts on which to base a claim of toleration, condonation, or encouragement of the harassment. ***Stoneking v. Bradford Area Sch. Dist.***, 882 F.2d 720 (3d Cir. 1989).

The record was insufficient to determine whether a school board was obligated to provide defense or insurance coverage in a suit brought against him by female students for inappropriate sexual behavior by communicating his desire to take sexual liberties with them; however, it was not required to provide counsel since the teacher's conduct was malicious and he was not acting within his authorized official capacity at the time of the alleged incidents. ***Matta v. Board of Educ. of Prince George's County***, 552 A.2d 1340 (Md. Ct. Spec. App. 1989).

Where a former student filed a civil rights suit in which she alleged that on numerous occasions students and faculty at the Maine Maritime Academy sexually abused her, her complaint was pled with sufficient particularity to allow one of the defendants to respond, knowing whether or not he was involved in any or none of the incidents charged. ***Cox v. Maine Maritime Academy***, 122 F.R.D. 115 (D. Me. 1988).

The discharge of a tenured professor for misconduct was supported by evidence that he had repeatedly put his arms around a female student's shoulder during class and an examination, that he had harassed a second female student by going to her seat and squeezing her shoulder, that he put his arms around the shoulder of a third female student and put his hand on her ribs which prompted her to insist that he leave her alone, and that he suggested to a fourth student that she could remedy her poor performance in class and obtain an "A" if she worked alone with him and was "cooperative." ***In re Kozy***, 371 S.E.2d 778 (N.C. Ct. App. 1988).

Civil Rights

Sexual Orientation

Where an applicant for a position as a public school teacher brought a section 1983 suit against a principal alleging that he was denied the position based on the principal's perception that he had "homosexual tendencies," material issues of fact relating to the principal's decision precluded summary judgment in favor of the principal. ***Jantz v. Munci***, 759 F. Supp. 1543. (D. Kan. 1991).

Findings did not support a conclusion that a school district policy under which staff members who had Acquired Immune Deficiency Syndrome (AIDS) or AIDS-Related Complex (ARC) would be placed on sick leave or leave of absence discriminated on the basis of sexual orientation through its disparate impact upon homosexual and bisexual men; however, as AIDS/ARC constitutes an actual impairment within the meaning of state law, and the policy was intended to be enforced in a blanket manner, the district was unable to prove its safety concerns on a case by case basis. ***Racine Unified Sch. Dist. v. Labor and Industry Review Comm'n***, 476 N.W.2d 707 (Wis. Ct. App. 1991).

Where a former midshipman at the United States Naval Academy challenged the constitutionality of regulations concerning the discharge of admitted homosexuals even though he was not charged with homosexual conduct and sought his reinstatement, the Secretary of the Navy was not entitled to discovery of the alleged homosexual conduct during or after tenure as a midshipman. ***Steffan v. Cheney***, 920 F.2d 74 (D.C. Cir. 1990).

Athletics

Parents of a male high school student who challenged a school's decision to deny their son permission to play on the girl's field hockey team were denied a preliminary injunction where they failed to establish the likelihood of success on the merits of their claim that the school and state high school league violated title IX's prohibition of sexual discrimination in programs or activities receiving federal financial assistance absent a showing that either the league or the school's athletic program received federal funding. ***Kleczek on Behalf of Kleczek v. Rhode Island Interscholastic League, Inc.***, 768 F. Supp. 951 (D.R.I. 1991).

Where a female high school student brought a civil rights suit challenging rules which prohibited her from playing soccer on the boys' team in most regular and all post season games and the temporary restraining order that she was granted was rendered moot after the team lost its first tournament game, she was not a prevailing party entitled to attorney's fees since there was no legal resolution of the dispute. ***Libby v. South Inter-Conference Ass'n***, 921 F.2d 96 (7th Cir. 1990).

Where a male high school senior obtained a preliminary injunction permitting him to participate in interscholastic gymnastics on the girls' team and an appeal of the order was dismissed as moot when the season ended, he was qualified for attorney's fees as the prevailing party in a civil rights suit; however, the denial of such an award was not an abuse of discretion where the school board was deprived of its appeal by mootness and a companion case involving identical legal issues and overlapping defendants prevented the student's judgment from being reversed. ***Dahlem by Dahlem v. Board of Educ. of Denver Pub. Sch.***, 901 F.2d 1508 (10th Cir. 1990).

A change in seasons for high school girls' volleyball and basketball was not necessary to achieve and maintain gender equity in Montana high school athletics. ***Ridgeway v. Montana High Sch. Ass'n***, 749 F. Supp. 1544 (D. Mont. 1990).

Where a female high school student who successfully challenged her school district's refusal to permit her to try out for football team because of her sex was improperly awarded counsel fees by the Commissioner of Education, she was entitled to seek such an award under the state Law Against Discrimination before the Division on Civil Rights (DCR); however, on remand, the DCR was required to determine whether she was the prevailing party entitled to counsel fees. ***Balsley by Balsley v. North Hunterdon Regional Sch. Dist. Bd. of Educ.***, 568 A.2d 895 (N.J. 1990).

Where a male high school student brought a section 1983 claim challenging a state rule which restricted interscholastic volleyball competition to single-sex teams, he was denied relief since the rule would prevent females from being displaced in interscholastic competition and was substantially related to the goals of redressing past discrimination and promoting equality of athletic opportunity between the sexes. ***Clark By and Through Clark v. Arizona Interscholastic Ass'n***, 886 F.2d 1191 (9th Cir. 1989).

A regulation which provided that girls could not participate on boys' teams and boys could not participate on girls' teams if a school maintains separate teams in the same or related sports violated the state Human Rights Act for its failure to meet the substantially equivalent standard as it related to baseball and softball. ***Israel by Israel v. West Virginia Secondary Sch. Activities Comm'n***, 388 S.E.2d 480 (W. Va. 1989).

Where a male high school student who was denied particpation in interscholastic volleyball competition because of his sex filed suit under title IX and section 1983, he was granted a preliminary injunction; however, since the trial court applied a more stringent test than was constitutionally required in determining his likelihod of success on the merits of his equal protection claim, its order granting the injunction was reversed. ***Rowley by Rowley v. Members of the Bd. of Educ. of St. Vrain Valley Sch. Dist. RE-IJ***, 863 F.2d 39 (10th Cir. 1988).

Where a female high school student who was cut from varsity baseball team brought a civil rights action against the coach and school officials she was denied relief since she failed to prove that the decision to cut her was tainted or motivated by gender bias. ***Croteau v. Fair***, 686 F. Supp. 552 (E.D. Va. 1988).

Pregnancy

Statistical evidence focusing on the absolute number of sick days female teachers had accumulated over their teaching careers was insufficient, standing alone, to establish that a school district's leave policies had a disproportionate and adverse impact on female teachers who experienced pregnancy-related disability; although the female teacher who challenged the policy claimed that it led female teachers who chose to have children to accumulate greater number of sick days, as opposed to maternity leave, than male teachers or female teachers who chose to forego childbirth, there was insufficient statistical evidence to support such an argument. ***Maganuco v. Leyden Community High Sch. Dist. 212***, 939 F.2d 440 (7th Cir. 1991).

A university teacher's claim of that she was discriminated against on the basis of her sex because she was pregnant failed where she was unable to establish that her emplyment was terminated even though she argued that an offer to renew her contract was a ruse where she presented no specific facts to demonstrate that the offer was a play. ***White v. University of Mass. at Boston***, 574 N.E.2d 356 (Mass. 1991).

A provision in a collective bargaining agreement which allowed only female teachers to take a one year leave without pay for childrearing contravened title VII and was thus per se void to the extent that it granted leave beyond the period of actual physical disability on account of pregnancy, childbirth, or related medical conditions. ***Schafer v. Board of Pub. Educ. of the Sch. Dist. of Pittsburgh, Pa.***, 903 F.2d 243 (3d Cir. 1990).

In an action by the federal government alleging that a school district's policies for pregnant teachers violated title VII as amended by Pregnancy Discrimination Act, genuine issues of material fact as to whether the district had a policy of allowing pregnant teachers who opted for paid medical leave rather than maternity leave to qualify for parental leave, as to whether the policy did not allow extended leaves to begin other than at the beginning of the school year, and as to whether the policy permitting teachers to make withdrawals from banked sick leave discriminated against pregnant teachers precluded summary judgment for either party. ***United States v. Board of Educ. of Consol. High Sch. Dist. 230, Palos Hills, Ill.***, 761 F. Supp. 519 (N.D. Ill. 1990).

A civil rights action against a school guidance counselor and vice principal alleging that they coerced a female student into having an abortion and for failing to notify her parents of her plans for an abortion was dismissed where they were not constitutionally required to notify a pregnant child's parents and the record indicates that she had been encouraged to speak with her family about her pregnancy. ***Arnold v. Board of Educ. of Escambia County, Ala.***, 754 F. Supp. 390 (S.D. Ala. 1990).

Where a secretary at a community college alleged that her title VII rights were violated when her employment was terminated because she was pregnant, a genuine issue of material fact precluded summary judgment on her discrimination claim; however, since she had failed to exhaust administrative remedies, the college was granted summary judgment on her state law claim. ***Suarez v. Illinois Community College***, 688 F. Supp. 376 (N.D. Ill. 1988).

A provision in a school district collective bargaining agreement which prohibited teachers from taking consecutive pregnancy disability and infant care leaves of absence constituted sex discrimination since pregnancy is a condition unique to women, only women had requested consecutive pregnancy disability and infant care leaves of absence, and the policy impacted on female teachers more harshly than on male teachers. ***Department of Civil Rights ex rel. Peterson v. Brighton Area Sch.***, 431 N.W.2d 65 (Mich. Ct. App. 1988).

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SCHOOL SEGREGATION: EDUCATIONAL PROGRAMS, FACULTY, and STUDENTS

FOURTEENTH Series, Number 4

Prepared by Carole Veir

Henslee, Ryan and Croce, Austin, Texas

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Educational Programs

A federal court has the discretion to permit a formerly dual school system to regain control over student assignments, transportation, physical facilities, and extracurricular activities while retaining supervision over faculty and administrative assignments as well as the overall quality of education in the school district when full compliance with a desegregation decree has not been demonstrated. ***Freeman v. Pitts***, 112 S. Ct. 1430 (1992).

Once a school district which had previously maintained a dual system was found to have achieved unitary status, it was under no obligation to eliminate all of the vestiges of past discrimination absent a showing that its actions were intentionally discriminatory. ***Price v. Austin Indep. Sch. Dist.***, 945 F.2d 1307 (5th Cir. 1991).

Requiring a state to contribute to funding a desegregation remedy was appropriate where the state and the local school district were jointly and severally liable; also, the cost of an asbestos abatement program in formerly black schools was a "segregation expense" which the State could properly be required to fund. ***Jenkins by Agyei v. State of Mo.***, 931 F.2d 470 (8th Cir. 1991).

A city's petition for consolidation as a means of achieving desegregation was rejected in light of general findings that the racial composition and enrollment of the county school district it sought to annex had remained virtually unchanged during the relevant time period because the state's legislative and political actions had not had a significant interdistrict desegregative effect, thereby precluding interdistrict relief. ***United States v. State of Miss.***, 921 F.2d 604 (5th Cir. 1991).

Although a state was required to partially fund a magnet school program as part of a desegregation plan, it was not required to pay for classroom computers at magnet schools where the focus of the educational programs did not require additional computers; however, it was required to partially fund such computers for a magnet program which involved advanced instructional programs for gifted students. ***Liddell v. Board of Educ. of St. Louis***, 771 F. Supp. 1493 (E.D. Mo. 1991).

A modification of a consent decree requiring a state to increase its share of costs implementing and completing a desegregation plan was warranted since undertaking the implementation of magnet schools and bilingual program was more costly than originally contemplated. ***Lorain NAACP v. Lorain Bd. of Educ.***, 768 F. Supp. 1224 (N.D. Ohio 1991).

A school district was permitted to modify its desegregation orders to enable it to implement a new plan involving magnet schools and "controlled choice" student assignment methods since this supplemented rather than replaced the existing orders. ***Coalition to Save Our Children v. Board of Educ.***, 757 F. Supp. 328 (D. Del. 1991).

A settlement plan agreed to by all parties was acceptable even if it would leave some elementary school programs with all black students for a time or it would call for more busing of black children than of white children since the federal constitution does not, of its own force, forbid all black schools. ***Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1***, 921 F.2d 1371 (8th Cir. 1990).

In order to end persistent problems with segregated and substandard secondary vocational schools, both a special school district and a city board of education were responsible for the operation of secondary vocational education schools on the theory that choice and competition would spur educational excellence. ***Liddell v. Board of Educ. of St. Louis***, 733 F. Supp. 1324 (E.D. Mo. 1990).

A proposed settlement of a desegregation suit which included the development of magnet schools together with backup provisions in those schools was a fair, reasonable, and adequate solution to charges of segregation raised against the school district. ***Parents for Quality Educ. v. Fort Wayne Community Schs. Corp.***, 728 F. Supp. 1373 (N.D. Ind. 1990).

Approval, as remedy for past discrimination, of a desegregation plan relying heavily on magnet programs in predominantly black schools and voluntary majority to minority transfers was not an abuse of discretion where the prior plans providing for mandatory busing and student assignments as well as pairing of black and white schools failed to produce the desired level of desegregation and there was sufficient evidence that the new plan would work. ***Stell v. Savannah-Chatham County Bd. of Educ.***, 888 F.2d 82 (11th Cir. 1989).

Modification of a desegregation plan ordering the discontinuation of limited busing for desegregation was permitted because any incremental regressive effect produced by the change was out weighed by permitting a greater degree of local control to the school district after it had established a commitment to desegregation, thereby increasing the quality of its overall educational programs. ***Flax v. Potts***, 864 F.2d 1157 (5th Cir. 1989).

A city board of education's proposed desegregation plan was inadequate in so far as it contained incorrect and unrealistic enrollment projections, inadequately considered the impact of the effect of

regular students transferring to fill expanded magnet targets and city to city transfer students, and included revised building capacity figures. ***Liddell v. Board of Educ. of St. Louis***, 718 F. Supp. 1434 (E.D. Mo. 1989).

A desegregation settlement could not be approved where it was contingent upon a legislative appropriation for funding and it was highly questionable whether the bill had actually become law; also, the student assignment portion of the plan was unconstitutional where, among other things, the entire mandatory busing burden at the elementary level would fall on black children. ***Little Rock Sch. Dist. v. Pulaski County Special Sch.***, 716 F. Supp. 1162 (E.D. Ark. 1989).

A formerly segregated school district's use of achievement grouping in certain subjects and grades did not constitute racial discrimination; also, the district's program for students gifted in art, creative writing, or drama was neither discriminatory nor administered in an unfair manner. ***Montgomery v. Starkville Mun. Separate Sch. Dist.***, 854 F.2d 127 (5th Cir. 1988).

A school district could be found in contempt for failing to comply with a court order concerning implementation of a magnet school program where evidence supported the district's failure to live up to its obligations to accept students on a waiting list; also, the collective bargaining agreements between the district and its teachers' organization was permitted to stand as long as it did not adversely impact upon the mandated desegregation remedies. ***Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist.***, 839 F.2d 1296 (8th Cir. 1988).

A finding of segregative intent on the part of a city school district was supported by evidence of the segregative impact of its neighborhood attendance plan and the foreseeability of its impact in the forms of segregation-enhancing school zone realignments, race-based staff assignments, race-based placement of minority students in special classes and prejudice enhancing treatment of these classes, race based decisions on school openings and closings, and the board's failure to take any steps to remedy the situation. ***United States v. Yonkers Bd. of Educ.***, 837 F.2d 1181 (2d Cir. 1987).

Where a city school board sought to compel the state to fund remedial and compensatory programs to eliminate the lingering effects of segregation, the burden of proof was properly shifted to the board based on the school system's achievement of unitary status. ***School Bd. of Richmond v. Baliles***, 829 F.2d 1308 (4th Cir. 1987).

A city school district's refusal to reestablish a four-year vocational education program at its predominately black vocational school was legitimate where there was little evidence that offering primarily academic courses to ninth and tenth graders would expand or improve the school's image; also, the proposed program would have done little to increase white enrollment at the school. ***Liddell v. Board of Educ. of St. Louis***, 822 F.2d 1446 (8th Cir. 1987).

A desegregation plan converting two of twenty-five black elementary schools into magnet schools did not comply with the desegregation mandate where two of the most racially isolated black schools would be scarcely affected either by the magnet schools or the plan as a whole; also, the plan did not comply since it was constructed with white flight as its premise. ***United States v. Pittman by Pittman***, 808 F.2d 385 (5th Cir. 1987).

A state statute authorizing local school districts to enter into voluntary plans providing for interdistrict transfers of students to promote racial integration was a legitimate exercise of the state's plenary power and did not violate the equal protection clause. ***Willan v. Menomonee Falls Sch. Bd.***, 658 F. Supp. 1416 (E.D. Wis. 1987).

Faculty

School authorities have broad discretion to implement educational policies including the power to assign faculty to achieve a racial ratio reflecting the racial composition of the system's teachers and to prescribe the ratio of white to minority students that reflects the overall composition the school district. ***Jacobson v. Cincinnati Bd. of Educ.***, 961 F.2d 100 (6th Cir. 1992).

A federal district court could not enter a consent decree which altered teacher's seniority rights under a collective bargaining agreement even though parents, pupils, and civic associations alleged intentional discrimination; absent a finding of intentional discrimination, the teachers' contractual entitlements cannot be altered. ***People Who Care v. Rockford Bd. of Educ.***, 961 F.2d 1335 (7th Cir. 1992).

A school desegregation order stating that court supervision would end when the goal of 25% black faculty and 10% other minority faculty and staff was reached did not constitute a perpetual order; a determination that a school system has or has not reached the point of maximum practical desegregation is fact-specific, reversible only if clearly erroneous. ***Morgan v. Burke***, 926 F.2d 86 (1st Cir. 1991).

On remand from the Supreme Court, an examination of the racial composition of the professional staff at each school in a formerly segregated school system, coupled with testimony of the executive director of personnel services for the district, showed that the faculties of the school system at all levels were integrated by the time the school district adopted a plan to discontinue busing which had started as part of a court ordered desegregation decree, thereby entitling the district to a complete dissolution of the initial decree; also, evidence supported the conclusion that transportation, extracurricular activities, and facilities were free from discrimination. ***Dowell v. Board of Educ. of Okla. City Pub. Sch. Indep. Dist. No. 89***, 778 F. Supp. 1144 (W.D. Okla. 1991).

A school board's implementation and periodic adjustment of a raceconscious faculty assignment plan was a valid exercise of its affirmative duty to eliminate vestiges of segregation in its schools since it was narrowly tailored to serve a compelling state interest except with respect to a seniority override goal that was based on the portion of blacks in the county as a whole rather than the portion of black school teachers in the system and the numerical parameters by which the seniority override was triggered had to be revised periodically. ***Vaughns v. Board of Educ. of Prince George's County***, 742 F. Supp. 1274 (D. Md. 1990).

In determining whether a school district satisfied its duty to desegregate and whether it operated a unitary system, student and faculty assignments at school would not be compared to the racial makeup of student enrollment and faculty in the entire county, but would be compared with the racial makeup of the student population and faculty in each constituent district in which the school was located. ***United States v. Charleston County Sch. Dist.***, 738 F. Supp. 1513 (D.S.C. 1990).

A clear pattern of assigning minority faculty and staff that reflected minority student assignments to schools was fatal to a school district's efforts to establish the absence of current segregative practices as it sought to have a desegregation order against it dissolved so that it could be declared unitary. ***Brown v. Board of Educ. of Topeka***, 892 F.2d 851 (10th Cir. 1989).

A city school district was not entitled to a finding of unitary status where the school board failed to comply with a goal of 70% to 30% white-to-black faculty ratio, the number of segregated schools had increased, and there was an overwhelming predominance of white teachers in a program for gifted students. ***Jacksonville Branch NAACP v. Duval City Sch. Bd.***, 883 F.2d 945 (11th Cir. 1989).

The fact that only one third of recent bond issue funds were used in minority sections did not preclude a finding that a school district had achieved unitary status with regard to faculty and staff and that federal supervisory jurisdiction would be terminated. ***Arvizu v. Waco Indep. Sch. Dist.***, 732 F. Supp. 721 (W.D. Tex. 1989).

Where a high school football team in a formerly segregated school system was comprised of approximately 80% black student-athletes, the district was precluded from reassigning white and hispanic teachers who also served as coaches and replacing them with black coaches in the name of integration since such a policy violated the rights of the teacher-coaches under the equal protection clause. ***Covington v. Beaumont Indep. Sch. Dist.***, 714 F. Supp. 1402 (E.D. Tex. 1989).

A plan to correct racial imbalances in a school district did not permit it to base massive teacher reassignments on factors including sex, age, education, and experience, as provided in the operative contract with teachers' union, absent evidence that current assignments were deficient in those areas. ***Little Rock Sch. Dist. v. Pulaski Cty. Special Sch. Dist. No. 1***, 660 F. Supp. 637 (E.D. Ark. 1987).

Absent attainment of maximum practicable desegregation in faculty and staff hiring practices, a court could order a minimum ratio of 25% black and 10% other minority faculty hiring. ***Morgan v. Nucci***, 831 F.2d 313 (1st Cir. 1987).

A city school board and the state were required to share equally in the cost of providing additional classrooms and teachers to reduce pupil/teacher ratios in nonintegrated elementary and middle schools; however, the school board was not entitled to transfer funds from a desegregation account for kindergarten teachers to desegregation accounts relating to reduction of pupil/teacher ratios in nonintegrated and magnet schools since it failed to demonstrate how it was injured by the inability to transfer the funds where the trial court approved funding for more teachers than the appellate court indicated would be necessary to meet the pupil/teacher ratios. ***Liddell v. Board of Educ. of St. Louis***, 830 F.2d 823 (8th Cir. 1987).

A plan for desegregation of a school district, under which it agreed to develop numerical goals and timetables for recruitment and promotion of blacks to administrative positions within its school system, to provide early childhood programs to identify and provide special assistance to black children who continued to suffer trickle-down effects of past segregation, and to improve participation of blacks in its

gifted and talented programs by using racially neutral screening tests, reflected a solid and workable approach to end segregation in the district and would be approved in all respects. ***Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist.***, 659 F. Supp. 363 (E.D. Ark. 1987).

Even though a city school board had established a magnet school that was desegregative in effect, it was not entitled to a dismissal of a segregation decree until it fully implemented the plan's provisions as they related to the desegregation of faculty and other staff. ***Mapp v. Board of Educ. of Chattanooga***, 630 F. Supp. 876 (E.D. Tenn. 1986).

Students

The failure of black parents to appeal a district court order which found that the school system attended by their children had achieved unitary status did not preclude their contesting an order entered ten years later which dissolved the desegregation order since the order was too ambiguous to bar parents from challenging it; also, in considering whether the vestiges of *de jure* segregation have been eliminated, a federal district court should look not only at student assignments, but to every facet of school operations, including faculty, staff, transportation, extracurricular activities and facilities as these are among the most important indicia of a segregated system. ***Board of Educ. of Okla. City Pub. Sch. Indep. Sch. Dist. No. 89, v. Dowell***, 111 S. Ct. 630 (1991).

An alteration of a desegregation remedy's goal of 60% minority and 40% nonminority students for magnet schools was proper despite expert testimony as to the phenomenon of tipping, which allowed nonminority students to leave if the minority population reached a given level because if the original plan had been adhered to, not all minority students would have been placed in middle or high schools for the academic year. ***Jenkins by Agyei v. State of Mo.***, 942 F.2d 487 (8th Cir. 1991).

The fact that 14 of 98 schools in a district had student populations that were more than 80% black did not preclude a finding that the district had achieved unitary status since during the course of implementing various desegregation plans the population of white students in the district declined by more than one half; also, since fierce competition existed for minority faculty and staff, the lower court did not err in holding that several schools had eliminated discrimination even though they fell short of the district's affirmative action goals. ***Flax v. Potts***, 915 F.2d 155 (5th Cir. 1990).

A school district's pupil assignment policies were nonunitary where they failed to establish that the existing resegregation was caused by demographic changes and not by actions of the school board. ***Keyes v. School Dist. No. 1***, 895 F.2d 659 (10th Cir. 1990).

It was within a state board of education's prerogative whether to count bilingual students as part of a school's minority population for desegregation purposes even though Hispanic students remained in self controlled bilingual classes and neither interacted with nor were treated as part of the general school population. ***Coalition to Save Our Children v. Buchanan***, 744 F. Supp. 582 (D. Del. 1990).

A formerly segregated school district's limited form of achievement grouping did not discriminate against black students on the basis of race where there was evidence that the grouping was educationally sound both in theory and in practice, that the students were not locked into place or tracked in a grouping system, and that there was an "impressive" degree of movement among achievement levels by black as well as white students. ***Quarles v. Oxford Mun. Separate Sch. Dist.***, 868 F.2d 750 (5th Cir. 1989).

A school which was under a consent decree providing for the desegregation of students, student transportation and extracurricular activities, and faculty and other staff had not achieved unitary status where the number of black teachers decreased since the issuance of the decree and the racial disparity in both accelerated and special education classes was substantial. ***United States v. State of Miss.***, 725 F. Supp. 307 (N.D. Miss. 1989).

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SYSTEMIC SCHOOL DESEGREGATION

FOURTEENTH Series, Number 5

Prepared by William M. Gordon
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Author's Note: Desegregation suits tend to be lengthy, involving a series of actions. In fact, most of the leading cases including ***Brown, Jenkins, Keyes, and Liddell*** are ongoing. Moreover, many large school systems are still under court jurisdiction and reappear in court when specific issues must be decided. Thus, a review of the litigation requires multiple citations of these major cases as they make their way through the judicial system.

Segregative Intent

Evidence of the segregative impact of a new student assignment plan was not determinative of discrimination absent a showing that the school board acted with discriminatory intent; discriminatory purpose implies more than intent as awareness of consequences in so far as it implies that the decision maker selected or reaffirmed a particular course of action at least in part "because of" and not merely "in spite of" its adverse effects upon an identifiable group. ***Price v. Austin Indep. Sch. Dist.***, 945 F.2d 1307 (5th Cir. 1991).

Where a desegregation plan was consistent with factors announced by the Supreme Court to determine segregative intent, namely, the historical background of the action, the specific sequence of events leading up to the challenged action, procedural or substantive departures from the normal sequence of events, legislative or administrative history, especially contemporaneous statements by members of the decision making body, and the impact of the official action, it was properly adopted. ***Dowell v. Board of Educ. of the Okla. City Pub. Sch.***, 788 F. Supp 1144 (W.D. Okla. 1991).

Where a state statute had a limited discriminatory effect in the operations of a city school district, it was found to have passed without discriminatory intent. In order to establish unconstitutionality of a governmental act under the Fourteenth Amendment there must be discriminatory intent and impact; discriminatory intent cannot simply be inferred from a finding of slight discriminatory impact. ***United States v. Charleston County Sch. Dist.***, 738 F. Supp. 1513 (D.S.C. 1990).

The mere absence of invidious intent on the part of a school district is insufficient to satisfy its heavy burden of proof that the current segregative conditions are not the result of prior *de jure* segregation; a district's duty is to act affirmatively, not merely to act neutrally. ***Brown v. Board of Educ. of Topeka***, 892 F.2d 851 (10th Cir. 1989).

Despite the existence of a disproportionate racial impact caused by the implementation of a school district's facially neutral admissions policy, it was upheld where the evidence did not establish that adherence to the policies was intended to deprive black students in urban school districts of their rights under the Fourteenth Amendment. ***Naylor v. Lee's Summit Reorganized Sch. Dist. R7***, 703 F. Supp. 803 (W.D. Mo. 1989).

Official segregative intent on the part of a school board may be inferred from evidence of such facts as the segregative impact of board decisions, the historical background, specific sequences of events, departures from normal procedural or substantive standards, contemporary statements by members of the decision making body, and the totality of the circumstances. ***United States v. Yonkers Bd. of Educ.***, 837 F.2d 1181 (2d Cir. 1987).

A school board's decision to establish a magnet school for academics at one high school while closing a historically black high school was desegregative in effect and evinced no evidence of an intent to segregate by establishing a dual system; however, since the board failed to implement fully the provisions of its desegregation plan relating to faculty and other staff, it was not entitled to a dismissal until such time as those provisions were implemented. ***Mapp v. Board of Educ. of Chattanooga***, 630 F. Supp 876 (E.D. Tenn. 1986).

De Facto and *De Jure* Segregation

A school district segregated by law has a duty and a responsibilty to take all steps necessary to eliminate the vestiges of *de jure* segregation; however, once a racial imbalance due to *de jure* segregation has been remedied, the district is under no duty to remedy an imbalance created by demographic forces. ***Freeman v. Pitts***, 112 S. Ct. 1430 (1992).

In considering whether the vestiges of *de jure* desegregation have been eliminated as far as practicable and thus whether a desegregation decree should be dissolved, a court should not only look to school assignments, but also to every facet of the operation including faculty, staff, transportation, extracurricular activities, and facilities. ***Board of Educ. of Okla. City Pub. Sch., Indep. Sch. Dist. No. 89 v. Dowell***, 111 S. Ct. 630 (1991).

Where a school system has been declared unconstitutional because of the existence of *de jure* segregation, until such time as it achieves unitary status, any official action that has the effect of perpetuating or reestablishing a dual school system violates its duty to desegregate. ***Brown v. Board of Educ. of Topeka***, 892 F.2d 851 (10th Cir. 1989).

Where a city board of education had no constitutional duty to implement a resolution calling for the rescission of school district lines, assignment of children to schools on the basis of race and family income and bussing to achieve racial and economic integration, its decision not to enact such plans did not rise to the level of *de jure* segregation. ***Board of Educ. Sch. Dist. of City of Cincinnati v. Department of Health, Educ. and Welfare***, 655 F. Supp. 1504 (S.D. Ohio 1986).

Where no vestiges of prior *de jure* segregation remain in a public school system, the Constitution does not guarantee those students who have never been subjected to *de jure* school segregation the right to be free of all the effects of prior segregation; rather, it only requires that such students be provided a nondiscriminatory education. ***Bradley v. Baliles***, 639 F. Supp. 680 (E.D. Va. 1986).

Court Authority and Responsibility

A federal district court has authority to relinquish supervision and control over a desegregation plan in a school district in incremental stages before full compliance has been achieved in every area of school operation. ***Freeman v. Pitts***, 112 S. Ct. 1430 (1992).

An order from a federal district court imposing an increase in property taxes levied by a school district to insure funding for desegregation of its public school system violated the principles of federal/state comity; however, federal courts have the authority to require a school district to levy taxes in excess of limits set by a state statute in order to fund the school desegregation plan. ***Missouri v. Jenkins***, 110 S. Ct. 1651 (1990).

When fashioning a comprehensive remedy for school desegregation, it is the duty of a court to prescribe a level of relief, where appropriate, to include remedies that will achieve integration to the maximum practicable extent; also, once the decree is entered, its terms, including details such as racial percentages, are binding on the parties. ***Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1***, 911 F.2d 1371 (8th Cir. 1990).

Once a school district has eliminated all intentional racial discrimination, has eradicated all effects of the same, and has been declared unitary, a court is without power to order constant adjustments of students merely in order to maintain a certain racial balance. ***Keyes v. School Dist. No. 1***, 895 F.2d 659 (10th Cir. 1990).

Where a school system has a history of segregation, there is a need for specific and effective remedial criteria so that the courts must apply a presumption of unconstitutionality against schools which remain substantially disproportionate in their racial composition. ***Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1***, 839 F.2d 1296 (8th Cir. 1988).

State and Local Responsibility for School Desegregation

Before a court can relinquish control over a school district in whole or in part, the district must demonstrate its commitment to a course of action that it will end discrimination; also, it is the duty of the state and its subdivisions to ensure that forces of discrimination and racial hostility do not shape or control policies of its school system. ***Freeman v. Pitts***, 112 S. Ct. 1430 (1992).

Where the state was obligated to fund a voluntary transfer plan as part of the goals of a desegregation plan up to a total of 15,000 students regardless of any individual county school district's desegregation plan ratio and or plan goal achievement, its obligation was to continue until such time as it was relieved of its duty by the court. ***Liddell v. Board of Educ. of St. Louis***, 882 F.2d 298 (8th Cir. 1989).

Where a municipality acted to preserve segregated residential patterns and a school board acted to preserve segregation in the schools, the result was cooperation on a further course of action or inaction designed to maintain and enhance school segregation, such that both the municipality and the school board may be held liable. ***United States v. Yonkers Bd. of Educ.***, 837 F.2d 1181 (2d Cir. 1987).

Burden of Proof

Burden-analysis, by which the burden of proof shifts to a school district to explain why its decision was not intentionally discriminatory once a *prima facie* case of discriminatory effect has been shown, does not apply after a finding of unitariness has been entered with regard to a school district's plan system for eradicating a previous dual system; once unitariness has been found in an earlier suit, the plaintiffs bear the burden of establishing that a school board continued to act with an intent to discriminate. ***Price v. Austin Indep. Sch. Dist.***, 945 F.2d 1307 (5th Cir. 1991).

Until a formerly dual school system becomes unitary, the plaintiffs are entitled to the presumption that current disparities are causally related to prior segregation and the burden of proving otherwise rests on the defendants; however, where the plaintiffs alleged that

a state law was enacted with a discriminatory purpose, the burden of proof rested on them because unless and until such a statute is proven to be unconstitutional, it is a valid law which a school district is bound to follow. ***United States v. Charleston County Sch. Dist.***, 738 F. Supp. 1513 (D.S.C. 1990).

Although case law is unclear as to the precise meaning of the term, a plaintiff bears the burden of showing the existence of a current condition of segregation; this burden can be met by proving the existence of racially identifiable schools, broadly defined. ***Brown v. Board of Educ. of Topeka***, 892 F.2d 851 (10th Cir. 1989).

A minority class failed to demonstrate the requisite level of evidence to meet its burden of proof that it was disproportionately burdened by busing as a means of desegregating a school district where 96% of all majority students received their first choice for school attendance under the plan, 94% of the minority students received their first choice, and the class failed to present evidence that mandatory busing was imposed on minority students rather than majority students or that assignments to other than first choice schools affected minorities disproportionately. ***Diaz v. San Jose Unified Sch. Dist.***, 861 F.2d 591 (9th Cir. 1988).

Where a court finds the existence of an unlawful dual system, the plaintiffs are entitled to the presumption that current disparities are causally related to prior segregation and the burden of proving otherwise rests on the defendants; however, the presumption ends once a district has achieved unitary status. ***School Bd. of Richmond v. Baliles***, 829 F.2d 1308 (4th Cir. 1987).

Desegregation Plans

A valid desegregation remedy must be tailored to the nature and scope of the violation, must be designed to restore the victims of discrimination to the position they would have occupied had the discrimination not occurred, and must take into account the interest of state and local authorities in themselves managing the public schools. However, within these parameters, a court may order remedial programs even in the areas in which intentional discrimination has not existed if it concludes that the remedy is necessary to treat the condition that offends the constitution, and that the constitutional violation caused the condition for which the remedial programs are mandated. ***Keyes v. School Dist. No. 1***, 895 F.2d 659 (10th Cir. 1990).

A school board's voluntary desegregation plan which relied heavily upon magnet programs and majority to minority transfer programs to remedy past segregation was appropriate given the previous failure of mandatory pairing and busing and there was sufficient evidence that the new plan would work in a school system which had never achieved unitary status. ***Stell v. Savannah-Chatham County Bd. of Educ.***, 888 F.2d 82 (11th Cir. 1989).

A school district's desegregation plan was inadequate where it contained incorrect and unrealistic enrollment projections, where it inadequately considered the impact of the effect of regular students transferring to fill expanded magnet targets, and where it included questionable "revised" building capacity figures. ***Liddell v. Board of Educ. of St. Louis***, 718 F. Supp. 1434 (E.D. Mo. 1989)

Portions of a school desegregation plan were insufficient and unconstitutional where, in a city district almost one-fourth of the elementary schools were contemplated to be all black and the entire mandatory busing burden at the elementary level for desegregation purposes would fall on black children. ***Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist.***, 716 F. Supp. 1162 (E.D. Ark 1989).

Ratios Required in Desegregation Plans

School authorities have broad discretion to implement educational policy, including the power to prescribe a ratio of white to minority students that reflects the composition of the overall school district; this discretionary authority also includes the power to assign faculty to achieve a racial ratio reflecting the racial composition of the system's teachers. ***Jacobson v. Cincinnati Bd. of Educ.***, 961 F.2d 100 (6th Cir. 1992).

A district court did not abuse its discretion in adopting a contingency plan that temporarily allowed deviation from its goal of 60% minority and 40% non-minority ratios for magnet schools since it has broad discretion over the implementation of its orders providing. ***Jenkins by Agyei v. State of Mo.***, 942 F.2d 487 (8th Cir 1991).

A finding that 14 of 98 schools in a district had student populations that were more than 80% black was the product of dramatic shifts in housing patterns rather than of the former dual school system; during the course of implementing various desegregation plans in the district, its white student population declined by more than one half from 64% to 35.6%. ***Flax v. Potts***, 915 F.2d 155 (5th Cir. 1990).

The racial makeup of a school was constitutionally unacceptable where school authorities allowed white students to transfer in, thus changing its white/black ratio from 54.5% white to 45.4% black to 63.9% white to 36.1% black since that increment of change was likely to aggravate or alter popular perceptions of the school's racial identity and to affect the decision-making process of white students who were considering where to attend school. ***United States v. Lowndes County Bd. of Educ.***, 878 F.2d 1301 (11th Cir. 1989).

Pursuant to a long range plan adopted by a city school district with a history of segregated schools, the definition of racial balance for magnet schools was 55% back and 45% white, with an allowable variance of plus or minus 5 percentage points to allow for differences between the number of students accepted and those who actually enroll and to fill vacant seats remaining after a specified date. ***Liddell v. Board of Educ. of St. Louis***, 696 F. Supp. 444 (E.D. Mo. 1988).

Choice

A proposed modification of a school district's desegregation plan enabling it to implement a magnet school involving a form of controlled choice relating to student assignments was permitted since it supplemented rather than replaced the original order. ***Coalition to Save Our Children v. Board of Educ.***, 757 F. Supp. 328 (D. Del. 1991).

In order to end persistent problems and segregated substandard secondary vocational schools, a special city district and city board of education were responsible for the operation of a secondary vocational education school on the theory that choice and competition are the incentives to spur educational excellence. ***Liddell v. Board of Educ. of St. Louis***, 733 F. Supp. 1324 (E.D. Mo. 1990).

A state statute authorizing school districts to enter into voluntary agreements for interdistrict transfers as a means of promoting racial desegregation was upheld as a legitimate exercise of the state's authority to fashion school policy; also, it did not violate the equal protection clause of the Fourteenth Amendment. ***Willan v. Menomonee Falls Sch. Bd.***, 658 F. Supp. 1416 (E.D. Wis. 1987).

Neighborhood Schools

Absent evidence in the adoption of a neighborhood elementary school policy that school board members intentionally sought to discriminate against minority students, the plan was permitted even though there was a likelihood that additional elementary schools in certain geographic areas might experience an increased concentration of racial or ethnic minority students. ***Price by Price v. Austin Indep. Sch. Dist.***, 729 F. Supp. 533 (W.D. Tex. 1990).

A neighborhood school plan must be both neutrally administered and effective; a plan that is administered in a scrupulously neutral manner but is not effective in producing greater racial balance does not fulfill the affirmative duty to desegregate. ***Brown v. Board of Educ. of Topeka***, 892 F.2d 851 (10th Cir. 1989).

White Flight

While state action, including its impeding a city's ability to annex a county territory and publicly choosing not to consolidate a city and county school district, enabled effective white flight from the city district to the county district, white flight did not occur since the enrollment and racial composition of the county schools remained stable. ***United States v. State of Miss.***, 921 F.2d 604 (5th Cir. 1991).

A school desegregation plan calling for the creation of magnet schools which was constructed with white flight as its premise was fatally flawed in view of the continued existence of two historically all black schools; white flight must be met with creativity and not with a delay in segregation. ***United States v. Pittman by Pittman***, 808 F.2d 385 (5th Cir. 1987).

Claims raised by a city school district that a suburban district's proposed desegregation plan would cause white flight due to its provisions for neighborhood schools were held meritless since the plan called for children to be assigned to the schools closest to their homes as long as such an approach was compatible with the desegregation efforts underway. Thus, where the court found it implausible to think whites were any more likely to flee in any great numbers to a 15% black school than to a 24% black school, the plan was left undisturbed. ***Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist.***, 656 F. Supp. 504 (E.D. Ark. 1987).

Proposed District Annexation

General findings that the racial composition and enrollment of a county school district had remained virtually unchanged during the relevant time periods, and thus showed that the state's legislative and political

actions did not have significant interdistrict relief, a city's annexation petition to transfer students and territory from a county school district was rejected. ***United States v. State of Miss.***, 921 F.2d 604 (5th Cir. 1991).

When a city school district sought to annex territory and students from an adjacent county district, the black families living in the annexed area were denied relief since they failed to establish the existence of an interdistrict violation after the area was annexed by the city and the city school district expanded to accommodate the new students; also, at the time of the annexation, the city's school system had been declared unitary and was fully willing and able to accommodate students from the annexed county school district which remained subject to federal court desegregation orders. ***Stout v. Jefferson County Bd. of Educ.***, 845 F.2d 1559 (11th Cir. 1988).

Unitary Status

The term unitary does not have a fixed meaning or content that is inconsistent with the principles that control the exercise of equitable power; accordingly, since a court's end purpose must be to remedy segregation and to restore state and local authorities to the control of a school district that is operating in compliance with the Constitution, a school district may be restored to unitary status incrementally. ***Freeman v. Pitts***, 112 S. Ct. 1430 (1992).

In determining whether to dissolve a segregation decree and restore a school district to unitary status, a court should address whether the school board has complied in good faith with the desegregation decree since it was entered and whether the vestiges of past discrimination have been eliminated as far as possible. ***Board of Educ. of Okla. City Sch., Indep. Sch. Dist. No. 89***, 111 S. Ct. 630 (1991).

A previously segregated school system does not become desegregated, achieve unitary status, and become relieved of court supervision simply by implementing a desegregation plan; also, a district court must retain jurisdiction for no less than three years after a school system has implemented a desegregation plan to ensure that it is properly carried out, to guard against the possibility of recurring constitutional violations, and to ensure achievement of the ultimate goal of becoming unitary. Only after this period has lapsed may a court terminate a desegregation action by holding a hearing to determine whether the system has achieved unitary status. ***Lee v. Etowah County Bd. of Educ.***, 963 F.2d 1416 (11th Cir. 1992).

Once a school district has been fully remedied of its violations, its segregation decree has been dissolved, and it has been restored to unitary status, a plaintiff may not seek relief from that judgment and have the determination re-evaluated based on later developments under the preunitary standards; however, a plaintiff is free to bring a new suit challenging actions that allegedly have occurred since the dissolution of the decree. ***Dowell v. Board of Educ. of the Okla. City Pub. Sch., Indep. Dist. No. 89***, 782 F. Supp. 574 (W.D. Okla. 1992).

Unitariness is a finding of fact reviewed under the clearly erroneous standard so that a totality of deficiencies does not preclude a finding that a formerly dual system school district has achieved unitary status. ***Flax v. Potts***, 915 F.2d 155 (5th Cir. 1990).

Where a city school district's desegregation plan was not tailored to the nature and scope of the constitutional violation, was not designed to restore the discrimination victims to the position they would have occupied had the discrimination not occurred, and failed to take into account the interests of the state and local authorities who would be managing the public schools, the district was properly denied unitary status. ***Keyes v. School Dist. No. 1***, 895 F.2d 659 (10th Cir. 1990).

To determine whether a formerly dual school system has become unitary a court must consider what the district has done or failed to do in order to fulfill its affirmative duty to desegregate, the current effects of its actions, and the extent to which further desegregation is feasible taking into account the practicalities of the situation. ***Brown v. Board of Educ. of Topeka***, 892 F.2d 851 (10th Cir. 1989).

A previously segregated school system cannot be declared to have achieved unitary status as long as there is continued segregation as demonstrated by racial identification in faculty and staff assignments, extracurricular activities, and facilities, and, to a lesser extent, student assignments. ***Jacksonville Branch, NAACP v. Duval County Sch. Bd.***, 883 F.2d 945 (11th Cir. 1989).

Applying the six factors necessary in making a determination of whether a system is unitary handed down in ***Green v. County Sch. Bd. of New Kent County, Va.***, 391 U.S. 430 (1968), namely whether segregation no longer exists in faculty, staff, transportation, extracurricular activities, facilities, and composition of the student body, a former dual system was declared unitary. ***Arvizu v. Waco Indep. Sch. Dist.***, 732 F. Supp. 721 (W.D. Texas 1989).

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